



Deposition of:
Christy Bunce

January 12, 2022

In the Matter of:
**Spearman, Gina v. Broker Solutions,
Inc. Et Al**

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF GEORGIA
3 ATLANTA DIVISION

4 GINA SPEARMAN,

5 Plaintiff,

CIVIL ACTION FILE

6 vs.

NO. 1:20-cv-04981-CAP

7 BROKER SOLUTIONS, INC.

d/b/a NEW AMERICAN FUNDING,

8
9 Defendant.

10
11 DEPOSITION OF CHRISTY BUNCE
12 APPEARING REMOTE FROM
13 TUSTIN, CALIFORNIA

14
15 JANUARY 12, 2022

16 11:07 A.M. EST
17
18
19

20 Reported By:

21 Judith L. Leitz Moran

22 RPR, RSA, CCR-B-2312

23 APPEARING REMOTELY FROM ATLANTA, GEORGIA
24
25

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22 * KEN BLOCK, ESQUIRE, NEW AMERICAN FUNDING

23 * GINA SPEARMAN, PLAINTIFF
24
25

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1 WITNESS APPEARED REMOTELY FROM TUSTIN, CALIFORNIA

2 JANUARY 12, 2022 - 11:07 A.M. EST

3
4 THE COURT REPORTER: Christy, please
5 raise your right hand.

6 CHRISTY BUNCE
7 being first duly sworn, was examined as follows:

8 MS. BUNCE: I do.

9 EXAMINATION

10 BY MS. GIBSON:

11 Q Good morning, Ms. Bunce.

12 A Good morning.

13 Q My name is MaryBeth Gibson. How are you
14 today?

15 A Good. How are you?

16 Q I'm fine. Thank you for appearing today.
17 As you know, I'm Mary Beth Gibson and I'm
18 a lawyer and I represent Ms. Spearman in the
19 litigation against NAF.

20 And I'm going to refer to New American
21 Funding as NAF if that's okay with you.

22 A Of course.

23 Q Okay. And I'm just going to give you
24 some ground rules about the deposition today.

25 Your lawyer probably already went over

1 these, but I just want to remind you, you need to
2 give verbal responses.

3 The court reporter is recording
4 everything today and she needs a yes or no or full
5 responses to record in the transcript.

6 You're going to receive a copy of the
7 transcript.

8 MS. GIBSON: Henry, do you want to read
9 and sign?

10 MR. PERLOWSKI: Yes.

11 MS. GIBSON: Okay.

12 BY MS. GIBSON:

13 Q So you'll have the opportunity to review
14 the transcript after your deposition is concluded.

15 I just ask you if you will wait until I
16 finish my questions so you have the complete
17 question and then you can answer.

18 And if there's anything you don't
19 understand, feel free to ask me any questions or
20 ask me to repeat the question. I don't have no
21 problem with that.

22 Let's try not to talk over each other.
23 You may anticipate what I'm going to ask, but let
24 me complete my question so that the court reporter
25 has a clean transcript of what we're discussing

1 today; is that okay?

2 A Yes.

3 Q Okay. And the court reporter gave you an
4 oath where you attested that you will tell the
5 truth under penalty of perjury, and do you
6 understand what that means?

7 A I do.

8 Q Okay. Are you on any medications today
9 that might affect your memory?

10 A No.

11 Q Are you on any medications that might
12 affect your ability to testify truthful?

13 A No.

14 Q Also, if you -- if at any time you need a
15 break, we're going to be going for a while today,
16 just let me know, I'm happy for us to take a break
17 whenever you need one.

18 If there's a question pending, I'll just
19 ask that you answer the question before we take a
20 break.

21 A No problem.

22 Q Okay.

23 A Uh-huh.

24 Q Okay. And also, we're doing this a
25 little differently. We're doing it by Zoom. So as

1



2 Q Have you ever served in the military?

3 A No.

4 Q Have you ever been arrested?

5 A Yes.

6 Q What were you arrested for?

7 A A bar fight when I was 21 years old.

8 Q Okay. Are you married?

9 A I am.

10 Q And what is your spouse's name?

11 A Patrick Joseph Bunce.

12 Q And does he live in the same residence?

13 A He does.

14 Q Okay. Have you ever been married before?

15 A No.

16 Q Do you have any children?

17 A I do.

18 Q And what are their names and ages?

19 A Riley Joseph Bunce, 22; Kaitlyn Rose

20 Bunce, 17.

21 Q And where do they live?

22 A With me.

23 Q Do you have any relatives that live in

24 Atlanta, Georgia?

25 A I do not.

1 Q Are you a member of any civic
2 organizations?

3 A Clarify "civic."

4 Q Organizations in the community?

5 A No.

6 Q Any organizations related to your
7 employment?

8 A Yes, the MBA.

9 Q And what does that stand for?

10 A Mortgage Bankers Association.

11 Q Okay. And what about -- are you a member
12 of a church?

13 A I am not.

14 Q Okay. And have you ever filed
15 bankruptcy?

16 A No.

17 Q And what is your date of birth?

18 A 3/30/72.

19 Q Ms. Bunce, were you born in California?

20 A I was.

21 Q Where did you go to high school?

22 A El Dorado High School in Placentia,
23 California.

24 Q And did you go to college after that?

25 A I did.

1 Q Where did you go to college?

2 A Cal State Fullerton.

3 Q And did you go to any postgraduate
4 school?

5 A I did not.

6 Q And what was your degree that you
7 acquired when you graduated from college?

8 A Communications.

9 Q Okay. Have you ever been a party to a
10 lawsuit?

11 A I have not.

12 Q Have you ever given your deposition
13 before?

14 A I have.

15 Q And when did -- tell me the circum --
16 tell me how many times you've done that.

17 A I've been in three depositions.

18 Q Okay. And what were they related to?
19 Were they related to work or something personal?

20 A Work.

21 Q Work.

22 And tell me when they were.

23 A Oh, gosh. October 2020. The one before
24 that was, goodness, probably sometime in 2018. One
25 before that was probably 2015.

1 Q Okay. Let's take the one in 2020. What
2 were you giving your deposition in when you gave
3 that deposition?

4 A It was for a qui tam.

5 Q Was it filed against -- a qui tam action
6 filed against NAF?

7 A Correct.

8 Q And what was the basis of the qui tam?
9 What were the general allegations?

10 A It's a false --

11 MR. PERLOWSKI: Object to the form.

12 You can answer.

13 A It's a false claims proceeding.

14 BY MS. GIBSON:

15 Q Is that litigation still pending?

16 A It is not.

17 Q And where was that filed?

18 A I don't know.

19 Q Was it in California?

20 A I don't know. I'm sorry, what?

21 Q Was it in California?

22 A I think that's where the filing was, yes.

23 Q Okay. And did it go to trial?

24 A It did not.

25 Q Did NAF settle?

1 A We did.

2 Q Was NAF -- did NAF have to pay a fine?

3 MR. PERLOWSKI: Ms. Bunce, I want to
4 caution you, and again, understanding I wasn't
5 counsel for that, but if the terms of the
6 settlement were confidential, do not reveal those.

7 A As far as I know, it was confidential.

8 BY MS. GIBSON:

9 Q It was confidential. I'm not asking the
10 amount of the fine, but whether NAF had to pay a
11 fine was confidential?

12 A As far as I know, that was confidential.

13 Q Okay. And then in the 2018 -- and I
14 should have explained this as well.

15 Your lawyer will object throughout the
16 course of the deposition. Most of the time it's
17 going to be --

18 MS. GIBSON: And Henry, I didn't even ask
19 you, do we want to have the normal stipulation
20 regarding the reservation of objections?

21 MR. PERLOWSKI: Yes.

22 BY MS. GIBSON:

23 Q Okay. So he'll object and if it's to
24 form, you may go ahead and answer. If he instructs
25 you not to answer based on attorney/client

1 privilege, then you would not answer. And I just
2 want to make sure you understand that.

3 And I'm not going to try and ask you
4 anything that you and your lawyers discussed, so
5 hopefully that won't arise, but I just wanted to
6 let you know.

7 A I understand.

8 Q Okay. So the 2018 litigation that you
9 gave your deposition, what was that about?

10 A It was an employment lawsuit.

11 Q And did an employee sue NAF?

12 A No, a former employer of one of our
13 employees.

14 Q What was the basis of that litigation?

15 A That he -- that our employer had -- our
16 employee had violated his nonsolicit noncompete.

17 Q Okay. And did that go to trial?

18 A It did not.

19 Q Was that settled?

20 A It was.

21 Q Do you remember what year that settled?

22 A I'm guessing, but I think it was 2018 but
23 I'm -- I'm really not sure.

24 Q Okay. And do you remember when the qui
25 tam litigation settled?

1 A It settled in 2021.

2 Q And then the 2015 litigation, what was
3 that about?

4 A That was a loan officer that was suing
5 New American.

6 Q And did that go to trial?

7 A It did not.

8 Q Did NAF settle with the loan officer?

9 A As far as I remember, no. We actually
10 won.

11 Q Do you know how you won if it didn't go
12 to trial?

13 A I think that it was -- I think it was
14 dropped, if I remember correctly, but honestly, it
15 was so long ago.

16 Q And why did the loan officer sue NAF?

17 MR. PERLOWSKI: Object to the form.

18 A I can't even remember what it was.

19 BY MS. GIBSON:

20 Q Okay. Was it about the terms of his or
21 her employment contract?

22 A I don't think so. I think -- if I
23 remember correctly, and this is a while ago, I
24 think it was wrongful termination.

25 Q Okay. Have you ever been involved in an

1 arbitration?

2 A Not that I recall.

3 Q What about a mediation?

4 A Not that I recall.

5 Q Okay. When did you first come to work
6 for NAF?

7 A 13 years ago.

8 Q When did you graduate from college?

9 A Oh, gosh, let me think.

10 Q Approximately?

11 A 1992.

12 Q Okay. So you've been working for NAF for
13 approximately 13 years, and if my math is correct,
14 that's approximately 2009 --

15 A Yes.

16 Q -- that you began?

17 Okay. Well, where did you work before
18 NAF?

19 A Before New American, I worked at
20 Greenlight Financial.

21 Q And what did you do for -- can you say
22 that again, Green Link?

23 A Greenlight.

24 Q Greenlight, okay. What did you do for
25 them?

1 A I was VP of operations.

2 Q And how long did you work for them?

3 A Well, I worked for them twice, so I
4 worked for them for about a year before coming to
5 New American.

6 I'll just give you a quick. And then
7 before that --

8 Q Okay.

9 A -- I worked for Countrywide as an account
10 executive for a couple of years. And before that,
11 I had worked at Greenlight for about four years.

12 Q Was that your first job out of college?

13 A No. No, no, no.

14 Q Okay. And so tell me where before that
15 did you work.

16 A So starting back from college?

17 Q Sure. That would be great.

18 A Okay. So my first job out of college was
19 at Long Beach Mortgage. That was my first mortgage
20 job. And then I went to Ditech.

21 Q How long were you at Long Beach?

22 A Oh, gosh, I don't even remember. I'm
23 going to guess I think maybe four years.

24 Q Okay.

25 A And then Ditech, probably three years.

1 Greenlight, about four years. Countrywide, one to
2 two years, back to Greenlight and then to New
3 American.

4 Q So, in approximately 2009, you started at
5 New American, correct?

6 A Correct.

7 Q And how did you come to be hired by NAF?

8 A I had met the owners when I was working
9 at Countrywide, so I was their subprime account
10 executive.

11 Q Okay. And when you were hired by NAF,
12 what was your title when you were hired?

13 A I was hired as operations manager.

14 Q And what did you do as operations
15 manager?

16 A I ran operations. So processing,
17 funding, underwriting, all reported up to me.

18 Q All the -- I didn't hear the last thing
19 you said. All the corporate, what?

20 A Processing, funding and underwriting, all
21 those departments.

22 Q Okay.

23 A That's what I managed.

24 Q And how long were you the operations
25 manager?

1 A Well, I'm still the operations manager,
2 I'm just a COO now. So, I mean, the job just grew
3 as we grew, so.

4 Q So when you -- when you began in 2009,
5 how big was NAF when you started with them?

6 A 50 employees, 5-0.

7 Q When did you become COO?

8 A Oh, gosh, probably five years ago.

9 Q So approximately 2016-'17?

10 A Yeah, that's -- that's probably right.

11 Q Were you COO when NAF hired Ms. Spearman?

12 A I was, yes.

13 Q So, in addition to being operations
14 manager and COO, have you ever had any other title
15 or role at NAF?

16 MR. PERLOWSKI: Object to the form.

17 A I think I went from operations manager to
18 VP of operations, probably SVP and then COO.

19 BY MS. GIBSON:

20 Q And how did your job responsibilities
21 change when you went from operations manager to VP
22 of operations?

23 A They really didn't change. It was just a
24 function of us, you know, growing and getting
25 bigger and needing to bring management underneath

1 me to help manage as we -- as we -- as we grew.

2 Q Okay. And how did your job duties change
3 when you became SVP?

4 A Kind of the same. Kind of the same
5 thing. The job just got bigger, I was managing
6 more departments, more people, bringing in --
7 training out more people underneath us for better
8 management and accountability.

9 Q Did your compensation change when you
10 went from VP of operations to SVP?

11 A Not that I recall.

12 Q Did your compensation change when you
13 went from operations manager to VP of operations?

14 A Not that I recall.

15 Q And did your compensation change when you
16 went from SVP to COO?

17 A Not that I recall.

18 Q Has it changed at all since you were
19 hired in 2009.

20 A I think I had one compensation change
21 probably a year or two after I started.

22 Q So how -- tell me how your compensation
23 -- did you receive a salary?

24 A I do.

25 Q I'm sorry, I didn't hear you.

1 A I do.

2 Q And do you receive bonuses?

3 A I do.

4 Q And how are your bonuses calculated?

5 A My bonus is based on funded production.

6 Q Funded production of all of the regions?

7 A Yes, of the entire company.

8 Q Do you have a written agreement with NAF?

9 A I do.

10 Q And does that agreement identify how your
11 bonuses are calculated?

12 A Honestly, I'm -- I'm not sure. I've been
13 here for a very long time, so I don't know.

14 Q Okay. I'm going to show you what's in
15 your Exhibit Share. Give me a second.

16 MR. PERLOWSKI: So, sorry, MaryBeth, you
17 mentioned earlier that the exhibits are going to be
18 in the 1/11?

19 MS. GIBSON: Yes.

20 MR. PERLOWSKI: Okay.

21 MS. GIBSON: I'm moving the first one
22 over now.

23 MR. PERLOWSKI: Okay, thank you.

24 MS. GIBSON: So if you go to your Marked
25 Exhibits, you should see the deposition notice.

1 MR. PERLOWSKI: Got it. Thank you.

2 MS. GIBSON: Yeah, sure. No problem.

3 (Deposition Exhibit 1 marked.)

4 BY MS. GIBSON:

5 Q Ms. Bunce, are you able to refresh your
6 screen and see the deposition notice?

7 A I am, yes.

8 Q Okay. Have you seen this before?

9 A I have.

10 Q And when did you see this?

11 A I'm assuming back when we received it as
12 a company, so I think it was back in October.

13 Q In October of '21?

14 A Yeah.

15 Q Okay. How did you learn about the
16 lawsuit filed by Ms. Spearman?

17 MR. PERLOWSKI: Ms. Bunce, I just want to
18 caution you not to reveal the content of any
19 privileged communications, but you -- subject to
20 not revealing the content of those communications,
21 you can answer.

22 A Yes, so --

23 BY MS. GIBSON:

24 Q And, Ms. Bunce, like I said earlier, I'm
25 never going to ask you the contents of your

1 conversation with your lawyer. So I just am asking
2 you, when did you learn about the lawsuit?

3 A I don't recall the date, but I was
4 notified by general counsel, Ken Block.

5 Q Okay. And have you been shown any
6 documents relating to the lawsuit?

7 A I have.

8 Q Okay. Did you review any deposition
9 transcripts to prepare for your deposition today?

10 A Can you clarify deposition transcripts?
11 Of previous.

12 Q Yes.

13 A -- depositions or...

14 Q Yes.

15 A Oh, no, uh-uh.

16 Q Okay. Have you reviewed any transcripts
17 to prepare for your deposition?

18 A No, I've not reviewed any deposition
19 transcripts.

20 Q Okay. Have you reviewed any documents to
21 prepare for your deposition?

22 A Yes, I have.

23 Q Did you meet with your lawyer to prepare
24 for the deposition?

25 A I did.

1 Q And when did you do that?

2 A We've met a few times over the last month
3 or so. Probably three times.

4 Q Okay. And how long total would you say
5 you met to prepare for the deposition?

6 A Oh, gosh, maybe three, four hours total.
7 Maybe five.

8 Q And you said you reviewed documents in
9 preparing for your deposition. What documents did
10 you review?

11 A Just various documents that were
12 presented to me.

13 Q Do you remember what documents were
14 presented to you?

15 A Gina's employment contract, some emails,
16 a profit and loss statement. I think that's
17 probably about it.

18 Q Okay. What employment contract were you
19 shown?

20 A The contract that was in her human
21 resources file.

22 Q And is that the contract dated
23 November 2016?

24 A As far as I remember, yes.

25 Q Okay. Do you remember specifically what

1 emails you reviewed?

2 A Not off the top of my head, no.

3 Q Okay. Do you remember what P&L statement
4 you reviewed?

5 A The 2018.

6 Q Do you know if that's the October to
7 December 2018 that was produced to Plaintiff this
8 week?

9 A I don't know if I reviewed that one. I
10 looked at the January through November 2018.

11 Q And do you know if that's been produced
12 in this litigation?

13 A As far as I know, yes.

14 Q Okay. Did you have any conversations
15 with anyone about the litigation outside the
16 presence of your lawyer?

17 A Not that I can recall.

18 Q Have you discussed the lawsuit with
19 anyone at NAF?

20 A Yes.

21 Q Who?

22 A Well, obviously, my general counsel.
23 He's an employer -- employee of NAF. And then when
24 we were reviewing with our counsel, Jan Preslo was
25 on that call as well who is also an employee of

1 NAF.

2 Q Did you discuss any -- the litigation
3 with the Arvielos?

4 A Not any specifics, no.

5 Q Have you discussed the litigation with
6 Kelly Allison?

7 A We did have a call with Kelly and our
8 counsel was on that call as well.

9 Q Okay. Were you asked to help provide
10 responses to interrogatories that were served on
11 NAF?

12 A I was, yes.

13 Q Were you asked to help gather documents
14 in response to requests for production of
15 documents?

16 A I was asked for direction on who to get
17 those documents from, and I -- and I let our
18 counsel know who they could get those documents
19 from.

20 Q Okay. So I want to go back to Exhibit 1,
21 the 30(b)(6) notice. And --

22 A I've got it on my other screen just so
23 you know, so I'm --

24 Q No problem.

25 And while you're pulling that up, you

1 said you told counsel who they could get the
2 responsive documents from.

3 Who did you tell them they could get the
4 responsive documents from?

5 A Most of the documents were able to be
6 gotten from Jim Muth in our finance department and
7 from our human resources department.

8 Q Does NAF have a central repository where
9 it stores all of its documents related to the
10 business?

11 A Well, not one central repository. So if
12 you're talking about like employee files, yes,
13 that's one -- one depository. That's our ADP
14 system.

15 Q And where else are documents stored at
16 NAF?

17 A On our share drives for some departments.

18 Q Okay. Have you seen -- okay, we talked
19 about you saw this probably back in October; is
20 that correct?

21 A Yes.

22 Q Okay. And your counsel identified you as
23 the 30(b)(6) witness to testify to topics in this
24 notice. Are you aware of that?

25 A I am, yes.

1 MR. PERLOWSKI: And -- I'm sorry, let me
2 be specific. Ms. Bunce has been designated for
3 Topics 1, 2, 3.

4 MS. GIBSON: Henry, I was just going to
5 go through this with her.

6 MR. PERLOWSKI: Okay, go ahead.

7 MS. GIBSON: Thank you. Yeah, no
8 problem.

9 BY MS. GIBSON:

10 Q So as your counsel was just about to say,
11 you've looked at this notice, correct, and he's
12 identified that you can testify to Topics 1, 2 and
13 3, 9, 10, 11, 12, 14, 15, 16, 19, 20, 22, 23, 24,
14 25, 26, 27, 28 and 29.

15 Are you able to testify to those topics
16 today?

17 A I'll let Henry review that real quick
18 because you rattled them off really quickly and I
19 know that we were --

20 Q I'm sorry.

21 A That's okay.

22 Q Probably would have been easier to state
23 the ones you were not testifying to.

24 MS. GIBSON: But go ahead, Henry, if you
25 want to review that.

1 MR. PERLOWSKI: No, I believe that --
2 MaryBeth, I believe that you accurately recited the
3 topics that were -- we emailed about this on
4 Friday, and you accurately recited the topics that
5 were allocated to Ms. Bunce.

6 MS. GIBSON: All right.

7 BY MS. GIBSON:

8 Q Okay. And Ms. Bunce, you understand that
9 you're testifying as New American Funding and
10 information known to the company --

11 A Yes.

12 Q -- is that right?

13 A Yes.

14 Q Okay. Are there any topics that you do
15 not believe you can testify to in a manner that
16 will bind the company?

17 A I believe I can testify to all of them.

18 Q Okay. Okay. And your individual
19 testimony has also been requested in this
20 litigation, and so I may be asking you questions
21 today with respect to your personal knowledge about
22 certain topics. And I will try and identify that
23 when I am speaking to you in an individual
24 capacity.

25 Your counsel and I spoke and we just

1 thought it would be better to do your deposition in
2 one entire day as opposed to as a 30(b)(6) witness
3 and then as an individual, as the COO. Do you
4 understand that?

5 A I do.

6 Q Okay. Before NAF hired Ms. Spearman --
7 and sometimes I may refer to Ms. Spearman and
8 Ms. Allison as Kelly and Gina. Do you know who I'm
9 referring to?

10 A Yes.

11 Q So before NAF hired Ms. Spearman, did it
12 have any offices in the Southeast?

13 A We did not.

14 Q Why did NAF hire Ms. Spearman?

15 A Gina was partner to Kelly Allison, and
16 they had been brought to us by a recruiter that was
17 employed by New American Funding.

18 And they were a perfect fit for New
19 American. We didn't have any offices in the
20 Southeast, as I just stated. And they have a great
21 book of business and seemed to be, you know, just
22 the right type of people that would, you know, grow
23 and flourish here at New American.

24 Q And who was the recruiter that you
25 referenced?

1 A Paul Pritchard.

2 Q And is he employed by NAF?

3 A He is.

4 Q Do you know how he came to learn about
5 Ms. Spearman and Ms. Allison?

6 A Well, as far as I know, he was -- he was
7 cold calling anybody and everybody that was a big
8 producer in the mortgage industry, so I think that
9 is how he came to know Kelly and Gina.

10 Q Okay. Were you involved in the meetings
11 that -- in which Ms. Spearman and Ms. Allison were
12 hired?

13 A I was.

14 Q Okay. So tell me about those meetings
15 and when they occurred.

16 A Oh, my goodness. I don't know the exact
17 dates. There were quite a few meetings. We had
18 meetings by phone. I wasn't involved in all of
19 them.

20 Kelly flew out, I think, a handful of
21 times. Gina came out one or two times before they
22 were actually officially hired.

23 And when I say came out, I mean, flying
24 out from Georgia to So Cal.

25 So we had quite a few meetings.

1 Q And was there -- do you recall a two-day
2 meeting where Kelly and Gina came out in the fall
3 of 2016 to meet with y'all with NAF?

4 A I do, yeah.

5 Q And were you present at that two-day
6 meeting?

7 A I was. I don't think I was in every
8 single meeting. They were meeting with a lot of
9 people at New American so that they could get a
10 good feel for what we do and how we do it. But I
11 was -- I was involved in those two-day meetings.

12 Q Do you recall who else was involved in
13 those two-day meetings?

14 A I'll assume at this point that it was our
15 marketing managers. I'm assuming Jason Obradovich
16 at one point, the RBLOs, Jan Preslo, Jon Reed.
17 Probably our tech team. They usually met with our
18 big recruits. Maybe human resources.

19 Q And do you know where Ms. Spearman and
20 Ms. Allison worked prior to joining NAF?

21 A Yes, I do.

22 Q Where did -- where did they work?

23 A Caliber.

24 Q So what was discussed during the time you
25 were present at these two -- during these two days?

1 A A lot of what we did when we were
2 recruiting Kelly and Gina was very in the weeds,
3 talking about everything that they did from soup to
4 nuts when it came to loans.

5 So in the mortgage industry, and I'm
6 assuming Gina explained this to you, but you know
7 -- and especially with what the business they did
8 with builder business -- it is imperative that you
9 close loans on time and you close them in a certain
10 way and you have very distinct communication with
11 the builder partners that they were bringing on to
12 the Southeast.

13 So a lot of our meetings were very, very
14 detailed and in the weeds about how they did things
15 to make sure that we could emulate the way they
16 were doing them at their current employer.

17 Q And so I presume NAF was happy with the
18 way they were doing things since they hired them;
19 is that correct?

20 A Correct.

21 Q Did you discuss compensation at these
22 two-day meetings?

23 A I'm sure we did.

24 Q Do you remember what you discussed?

25 A Most of the compensation conversations

1 were directed at Kelly. Kelly was the person that
2 was kind of dictating the overall compensation
3 package.

4 And then her and Gina were working out
5 their own kind of split, we called it a split back
6 then, of, you know, here's the whole -- here's the
7 whole package of what we are negotiating with New
8 American. And then Kelly was figuring out with
9 Gina what the split would be.

10 So there was just a lot of conversation
11 about, you know, how we paid high level managers,
12 what LO compensation would be for their LOs that
13 they were bringing over, all of their operation
14 staff.

15 Kelly was pretty focused on a P&L model
16 because that is something that she had been
17 accustomed to. We didn't have a P&L model at that
18 time.

19 So there was a lot of conversations about
20 the BPS override model that they were being
21 recruited into.

22 Q Do you remember specific conversations
23 about the BPS override model that was being offered
24 to them?

25 A Not like specific conversations like a

1 date and time. There was a lot of conversation
2 about compensation. And there always is when we're
3 recruiting big teams that are coming over with a
4 lot of moving parts.

5 And, you know, they've got a lot of skin
6 in the game. They're bringing their relationships.
7 So it's a big part of their recruiting meetings.

8 Q Sure.

9 Did you discuss various types of loans
10 that NAF would pay override bonuses on?

11 A We did, yes.

12 Q Do you remember what loans were
13 identified?

14 A It's mostly --

15 MR. PERLOWSKI: Object to the form.

16 You can answer.

17 THE WITNESS: Oh, sorry, Henry.

18 A So it's most of -- it's most of the
19 business that everybody does.

20 So it's -- it's the bulk of the business
21 is all paid to override. And then there's the
22 brokered business, bond and DPA business that
23 profits are very, very low on.

24 So then we discussed, you know, whether
25 we're going to pay overrides on those or not.

1 BY MS. GIBSON:

2 Q Okay. And what was discussed with
3 respect to whether you were going to pay overrides
4 on those?

5 A If I remember correctly, bond, DPA and
6 broker was not going to receive override bonus.

7 Q And so, you said you had discussions
8 about that. Did Kelly and Gina asked to be paid
9 overrides on broker, bond, and DPA loans?

10 A I don't think they specifically asked. I
11 think we were going through the economics of the
12 loans. And they're smart business people, they
13 know coming in, we've all been doing this a long
14 time, that the -- there just isn't room sometimes
15 to pay management overrides if you want to pay your
16 loan officers a certain amount of comp.

17 Q Did you discuss with Kelly and Gina what
18 kinds of loans that Caliber paid them overrides on?

19 A We didn't because they were on a P&L at
20 Caliber. So I don't know -- I don't know all the
21 interworkings of --

22 Q Was Ms. Spearman on a P&L at Caliber?

23 A I don't know. I don't --

24 MR. PERLOWSKI: Object to the form.

25 THE WITNESS: Sorry.

1 A I don't actually know.

2 MR. PERLOWSKI: I was going to say object
3 to the form. Answer to the extent you can.

4 THE WITNESS: Yeah.

5 BY MS. GIBSON:

6 Q So you don't know if Ms. Spearman was
7 being paid overrides on brokered loans, bond loans
8 and down payment assistance loans at Caliber; is
9 that correct?

10 A Correct.

11 Q Okay. And I know you just said they're
12 smart business women or something to that effect.
13 I don't want to misquote you.

14 But do you think she would leave Caliber
15 and be paid overrides on fewer types of loans at
16 NAF?

17 MR. PERLOWSKI: Object to the form.

18 BY MS. GIBSON:

19 Q You can answer.

20 A Yeah, I -- I can't -- I can't put myself
21 in Gina's shoes.

22 So Kelly -- you know, Kelly was -- is the
23 one that kind of leads that group. So Kelly was
24 interested in looking at New American Funding.

25 Gina was kind of the person that I

1 called, the one that kept the wheels on the bus.
2 Kind of like how I am at New American Funding.

3 So Kelly, I think, was really driving the
4 decisions to move, to look at other options. And
5 Gina was the person that was kind of keeping
6 everything together.

7 And so, I think it was -- my impression
8 of the whole situation was Kelly was driving the
9 decisions and Gina was a good partner to Kelly and
10 they were working out what made sense for them.

11 Q Okay. Do you -- during this two-day
12 meeting, do you remember anyone, yourself or anyone
13 present telling Gina that she'd be paid overrides
14 on fewer kinds of loans than she received at
15 Caliber?

16 A I don't think we talked in those types of
17 specifics at all, no.

18 Q Okay. In this two-day meeting with
19 potential recruits with NAF officers, is that a
20 normal process in hiring new hires, regional
21 managers?

22 A It was before COVID. Yeah, it was
23 something that we did. A lot of people would fly
24 in and we'd run them through so that they could
25 meet everybody that was important that they'd be

1 dealing with on a day-to-day basis.

2 Q Did you discuss at that two-day meeting
3 what states that NAF wanted Kelly and Gina to
4 develop?

5 A It really wasn't our decision, it was
6 Kelly's decision. So she was coming with business
7 in all the states that were in their contract
8 initially.

9 Q And I think you said, you were talking a
10 little bit earlier, that when they came, they bring
11 loan officers and there's loan officer comp to
12 consider.

13 Who hired the loan officers for each
14 state?

15 A Well, they're all employees of New
16 American Funding.

17 Q Okay. So who would offer the loan
18 officers contracts?

19 A New American Funding.

20 Q All right. So tell me how that worked.
21 Would Kelly and Gina recruit a loan officer and
22 then say it's a good fit and turn them over to NAF?

23 A Yeah. So the way it works and still does
24 to this day is the loan officer is recruited into
25 the south division.

1 Paul Pritchard takes over, puts an offer
2 together at the direction of Kelly as far as what
3 the compensation package needs to be.

4 And then the New American Funding human
5 resources team puts together the contract and sends
6 it out.

7 Q Okay. So HR puts together a contract for
8 a loan officer and you said sends it out. Who does
9 HR send it to?

10 A Directly to the candidate with a cc to
11 the managers.

12 Q And what happens after that?

13 A Well, we wait for the candidate to sign
14 the agreement. And usually there's back and forth
15 between the manager and the candidate.

16 Q So the loan officer has to sign the
17 contract and then do they return it to human
18 resources?

19 A That's all through Adobe Sign now. I
20 don't know if it was that way when we first were
21 hiring Kelly and Gina, but that is the way it is
22 now.

23 Q And does NAF sign the contract as well --

24 A We do, yeah.

25 Q -- as a loan officer?

1 Are Kelly and/or Gina required to sign
2 the loan officer contract?

3 A As far as I recall, no.

4 Q Is there anything they're required to
5 sign when a loan officer is hired?

6 MR. PERLOWSKI: Object to the form.

7 BY MS. GIBSON:

8 Q You can answer.

9 A As far as signing anything on the loan
10 officer, the specific person they're hiring, no,
11 they are not required to sign.

12 Q So they're not required to sign anything
13 on their contract, the loan officer's contract; is
14 that correct? Is that what you said? I'm just
15 trying to confirm.

16 A That's correct.

17 Q Okay. Did NAF ever change a loan
18 officer's compensation after they were hired?

19 A We have in the past, yes.

20 Q And what -- tell me about that process.
21 How does that happen?

22 A Well, our common practice is that we try
23 to give a 30-day notice if compensation is going to
24 change and we do that in writing. And then a new
25 contract is sent so that they do have the amended

1 contract that they can view.

2 Q And are they required to sign it?

3 A They aren't required to sign it.

4 MR. PERLOWSKI: Object to the form.

5 BY MS. GIBSON:

6 Q You can answer.

7 A They aren't required to sign it. So all
8 of our new hires are required to sign their initial
9 contracts because that is really what starts in
10 motion ordering equipment, doing branch rentals,
11 all of those kind of things.

12 But subsequent contracts, our practice
13 is, is that we -- like I said, we notify them at
14 least -- we try to within 30 days of the change,
15 and then we send the contracts out for signature,
16 but it is not required that they sign.

17 Q Okay. So you put their comp change in a
18 written contract and send it to the loan officer
19 asking for their signature, but it's not required?

20 A Correct.

21 (Deposition Exhibit 2 marked.)

22 BY MS. GIBSON:

23 Q Okay. I want to show you a loan. It's
24 loading. I think if you refresh your screen,
25 you'll see Exhibit 2 which is a composite exhibit

1 of the Offer of Employment made to Ms. Spearman, a
2 Regional Manager Agreement, and Schedule 1.

3 And it's Bates No. SPEARMAN0648. You'll
4 see that down in the left-hand corner.

5 Do you see that?

6 A I'm not seeing it and it's spinning, so
7 give me a minute.

8 MR. PERLOWSKI: Yeah, same for me. I can
9 see that it's loading and it's spinning.

10 Oh, by the way, Mr. Ogletree joined me.
11 He's in the room right now, but he's off screen,
12 but I just wanted to point that out for the record.

13 MS. GIBSON: Okay.

14 A Okay. I've got it up here.

15 BY MS. GIBSON:

16 Q Okay. Do you recognize this document?

17 A I do.

18 Q And you see in the bottom left-hand
19 corner the Bates No. SPEARMAN0648?

20 A I do not see that. Hold on.

21 Q It's in tiny print on the bottom left.

22 A Oh, yeah, I got it, okay.

23 Q So each page is going to have a number
24 like that, and I just want to identify that because
25 that will help you find pages I want to ask you

1 questions about.

2 Who prepared this document -- this offer
3 of employment?

4 A Our human resources department.

5 Q Any specific person in human resources,
6 do you know?

7 A I don't know.

8 Q Okay. And how is this given to Gina,
9 Ms. Spearman?

10 A I don't recall if we were using Adobe
11 back then or not. That is what we use now. It
12 could have simply been in an email format, I really
13 don't know.

14 Q Okay. And after -- so that -- you'll see
15 at the top this is dated November 4th, 2016?

16 A Yes.

17 Q Do you know how long after your two-day
18 meetings this -- this was or this was presented to
19 Ms. Spearman?

20 A I think it was pretty soon after because
21 I'm pretty sure that two-day meeting was in the
22 fall, and then this was November. So I'm assuming
23 it was pretty close to when they were out here.

24 Q Okay. And after -- let me ask you this:
25 Do you have any role in preparing this offer of

1 employment?

2 A I don't. I don't prepare the agreements.

3 Q Did you review it before it went out?

4 A I -- I do review -- I do review the
5 numbers, so that was -- that's something that I --
6 Jan Preslo and myself do. So we make sure that the
7 numbers are correct.

8 And when I say "numbers," I mean the
9 compensation.

10 Q Okay. So you review the compensation in
11 the offer of employment --

12 A Yeah.

13 Q -- and the agreement?

14 A Yeah.

15 Q So after this was sent to Ms. Spearman,
16 did you have any phone calls with her explaining
17 any portion of this document?

18 A Not that I can recall.

19 Q Okay. Do you know if anyone at NAF had
20 any discussions with her about the contents of this
21 document?

22 A Specific to this document, I don't know.

23 Q Are you aware of other conversations?

24 A Well, like I had said before, we had lots
25 of conversations about compensation, the

1 compensation model at New American, specifically
2 Kelly and Gina's compensation.

3 I was involved in sitting in meetings
4 where Kelly and Gina were talking about the
5 compensation split. So many, many conversations
6 about compensation, but I don't know specific to
7 once this agreement was sent.

8 Q Okay. But you don't remember a
9 conversation after the agreement?

10 A I -- I can't recall.

11 Q Okay. So if you, you know, want to take
12 a look at the document, you see at the bottom of
13 Page 1 -- or the bottom of every page, do you see
14 Ms. Spearman's initials?

15 A I do.

16 Q Okay. And do you see at the top of Page
17 1, it says, E-signed 2016 November 6th at
18 11:53 a.m.?

19 A Yes.

20 Q Okay.

21 A So at that time we were using Adobe, I'm
22 assuming, if it was e-signed.

23 Q Okay. Gotcha.

24 And if you go to Page 7 of that offer
25 letter which is Bates No. SPEARMAN0654.

1 A Yep, I've got it.

2 Q And do you see Ms. Spearman signed that?

3 A I do.

4 Q And did NAF also sign that?

5 A Yes, it looks like a human resources
6 assistant signed it, Erica Del Real.

7 Q And is she still employed at NAF?

8 A I don't think so.

9 Q Okay. So NAF sent this to Ms. Spearman
10 and required that she sign it; is that correct?

11 A That's correct.

12 Q Did NAF require all contracts to be
13 signed?

14 MR. PERLOWSKI: Object to the form.

15 BY MS. GIBSON:

16 Q You can answer.

17 A All initial contracts would have to be
18 signed. As I stated before, we would not order
19 equipment, start branch leases, things like that
20 until these offers were signed.

21 Q Okay. How is this returned to NAF after
22 it was e-signed?

23 A Well, when it's e-signed, it goes back
24 into the signer --

25 Q Adobe?

1 A Right, correct.

2 Q So it's through NAF; is that correct?

3 A As far as I -- yeah.

4 Q Okay. So NAF is -- when Ms. Spearman
5 signed this, NAF received the copy back?

6 A I would assume, yes.

7 Q Okay. And if you go a few more pages
8 after the signature page on the letter offer to the
9 Regional Manager Agreement, and it's SPEARMAN0656.
10 Do you see that?

11 A I do.

12 Q Okay. Do you know who prepared this
13 document?

14 A They're all prepared in human resources.

15 Q Okay. Is it -- is the regional manager
16 agreement the same for all regional managers?

17 A It's -- yeah, they're boilerplate.

18 Q Okay. If Ms. Spearman wanted to change
19 any provision of the document, would she be able
20 to?

21 A Yeah. Yes. We're pretty flexible when
22 it comes to hiring these higher level managers. If
23 they had an -- if they had an issue with the
24 language, then we would absolutely sit down and
25 discuss it and make amendments if we felt like we

1 could after reviewing it with our human resources
2 team and legal counsel.

3 Q Is that with respect to the compensation
4 or all provisions in the contract, like, for
5 example, the at-will employment agreement?

6 A Yeah. So anything is up for
7 conversation. So, you know, not to say that we
8 would agree to every single thing that somebody was
9 asking for, but yes, everything is up for
10 conversation.

11 Q If Ms. Spearman wanted to remove the
12 at-will provision, would NAF be agreeable to that?

13 MR. PERLOWSKI: Object to the form.

14 BY MS. GIBSON:

15 Q You can answer.

16 A We've never been asked to remove that. I
17 don't think I would be okay with removing that.

18 Q Okay. If you go to -- I want to go back
19 to the offer of employment, the first page -- the
20 second page of the document that you have there.

21 A Okay.

22 Q And on Page 2 which is SPEARMAN0649,
23 there is a Paragraph 3 at the bottom. And it says
24 Manager Agreements. And it says: Gina is eligible
25 to receive a Regional Manager Override. (Outlined

1 in Schedule 1 - Regional Manager Agreement).

2 Do you see that?

3 A I do.

4 Q So did Schedule 1 outline the overrides
5 that Ms. Spearman was eligible to receive?

6 MR. PERLOWSKI: Object to the form.

7 You can answer.

8 A As far as I know, yeah, I think it's in
9 this document, so we could review it.

10 BY MS. GIBSON:

11 Q Okay. And it says -- that Paragraph 3
12 says: Kelly and Gina are eligible to receive a
13 compensation differential of up to 140 BPS maximum
14 comp on all self-generated loans and house accounts
15 as well as 75 BPS max compensation on brokered
16 loans, compensation on all their direct reports.
17 Kelly and Gina will split the compensation with 70
18 to Kelly and 30 to Gina. Kelly will be responsible
19 for notifying accounting on the 70/30 split for
20 each pay period.

21 Do you see that?

22 A I do.

23 Q And when was this provision discussed
24 with NAF?

25 A Oh, they would have been discussed when

1 we were recruiting them. So this is the original
2 agreement. So this was all decided upon before we
3 did the initial agreement.

4 Q Okay. And tell me what it means that
5 Kelly and Gina are eligible to receive a comp
6 differential up to 140 BPS on all self-generated
7 loans.

8 A Yeah, so their loan officers, if I recall
9 right in conversation, some of their loan officers
10 were paid up to 140 basis points for their
11 originations.

12 So on the LOs that they brought over that
13 were on lower comp, they would receive the
14 difference between, like, if they brought in Joe
15 Smith at a hundred basis points in comp, Kelly and
16 Gina would split the 40 basis points differential.

17 Q Okay. So the offer has this Paragraph 3
18 regarding compensation, and then it outlines in
19 Schedule 1, the regional manager agreement, the
20 overrides that Ms. Spearman is entitled to receive;
21 is that correct?

22 A Do you want to go to the Schedule 1?

23 Q Yeah, I do in a minute, but I wanted to
24 make sure I understand that's your understanding of
25 Schedule 1?

1 A Yeah, that is my understanding. I'm just
2 saying we could review it because I don't memorize
3 these things.

4 Q I understand.

5 Can you go to the -- so there's an entire
6 schedule that discusses compensation; is that
7 correct?

8 MR. PERLOWSKI: Object to the form.

9 BY MS. GIBSON:

10 Q Go ahead. You can answer.

11 A That's correct.

12 Q Okay. So this Paragraph 3 is not the
13 only paragraph discussing compensation?

14 A Correct, it references Schedule 1.

15 Q Okay. And if you can go to Page 5 of
16 this document which is Bates 0652.

17 A Yep, I've got it here.

18 Q Okay. And if you can read the last
19 paragraph or just go to the last paragraph. It
20 states: This letter contains the entire agreement
21 with respect to your employment. It supersedes any
22 and all other representations or statements that
23 may have been made, either verbally or in writing,
24 with respect to the terms and conditions begin
25 offered by the company.

1 I think that's a typo.

2 And then the last sentence of that
3 paragraph says -- well, let me finish that.

4 "When signed by you, this offer letter
5 will be considered a written agreement with respect
6 to the subject matter contained in this letter. By
7 your signature below, you acknowledge and agree
8 that no other offers, representations, inducements
9 or promises have been made by the company that are
10 not included in this letter, and that you
11 understand no other offer, representations,
12 inducements or promises not included in this letter
13 are valid and binding. The material terms of your
14 employment as set out in this letter may not be
15 modified or amended by verbal agreement or course
16 of conduct, but only by a written agreement
17 presented by Human Resources, COO (presently
18 Christy Bunce) or CEO (presently Rick Arvielo)."

19 Do you see that paragraph?

20 A I do.

21 Q Okay. So this paragraph required that
22 Ms. Spearman sign this document; is that correct?

23 A Let's see. I don't think it requires the
24 -- I don't think there's anything in writing here
25 that says that it requires a signature.

1 Q So it says "When signed by you, this
2 offer letter" --

3 A "When signed by you." It doesn't say
4 that it has to be signed, so I don't know.

5 Q Understood.

6 "So by your signature below, you
7 acknowledge and agree." So if she didn't sign it,
8 then this would not be a binding agreement; is that
9 correct?

10 A No, our -- I've said -- I'll say it
11 again. So our practice is, is that for the initial
12 contract everybody has to sign because it shows us
13 that they are making a commitment to New American.

14 And we have a lot of things to do to
15 hire, especially a group the size of Kelly and
16 Gina. So branches have to be -- leases have to be
17 signed. Mass amounts of equipment have to be
18 provisioned and ready to send out.

19 So they do or are required to sign their
20 initial agreement in order for us to start the
21 process of onboarding a region.

22 Q Okay. So you agree with me then that she
23 had to sign this initial agreement?

24 A She did. Yes, she did.

25 MR. PERLOWSKI: Object to the form.

1 BY MS. GIBSON:

2 Q So the last -- what does the last
3 sentence mean, the material terms may not be
4 modified or amended by verbal agreement or course
5 of conduct, but only by a written agreement
6 presented by HR, you, or Rick Arvielo?

7 MR. PERLOWSKI: Object to the form.

8 You can answer.

9 A Okay. I mean, I think it's pretty clear
10 what it means. So we can't change your
11 compensation verbally.

12 BY MS. GIBSON:

13 Q Okay. Okay. Is compensation -- you
14 would consider then a compensation a material term
15 of employment?

16 A I would, yes. I think everybody would.

17 Q All right. Let's turn to the Schedule 1
18 which is Bates No. SPEARMAN669, which is the
19 schedule that was referenced in Paragraph 3 that we
20 just discussed.

21 A Okay, I got it up.

22 Q Okay. And you just testified that that
23 last sentence meant you can't change compensation
24 by verbal agreement.

25 How does NAF, if not by verbal agreement

1 or course of conduct, how does NAF change
2 compensation?

3 A So common practice is, is that we let the
4 people know that are having a compensation change,
5 we try to do that within 30 days of the
6 compensation change. And then we sign -- we send
7 an amended agreement through our e-sign system.

8 Q Okay. And when they receive the amended
9 agreement through the e-sign system, what happens
10 next?

11 A That -- that really is it. So we expect
12 them to review it, we would like for them to sign
13 it, but we don't require for them to sign it.

14 Q When you send it to them through the
15 e-sign system, is there a record of the document
16 being sent?

17 A Yes. Oh, as far as I know, yes. I'm
18 99 percent sure.

19 Q When a document is sent via the e-sign
20 system, is it already signed by NAF?

21 A No. As far as I know, they're
22 countersigned once they're back in the employees'
23 files.

24 Q Okay. Okay. So we are at SPEARMAN0669
25 which is the Schedule 1, Regional Manager

1 Compensation Details. Do you see that?

2 A Yes.

3 Q And this has Regional Manager Name: Gina
4 Spearman, Southeast Division.

5 So this is the Schedule 1 that was
6 attached to her regional manager agreement; is that
7 correct?

8 A Yes.

9 Q And if you go to the next, Page 2 of the
10 schedule which is SPEARMAN0670.

11 A Yep.

12 Q And if you look at that page, she
13 e-signed at the top and signed her initials at the
14 bottom; is that correct?

15 A Yep.

16 Q Okay. And 1.4 is titled Override Bonus
17 Calculation Table, correct?

18 A Yes.

19 Q Okay. And if we read that, it says: The
20 Override Bonus to Regional Manager shall be
21 calculated per the Override Bonus Calculation Table
22 below. Loan Volume and Units funded by managed
23 territory branches during calendar month will
24 receive the BPS shown in the Override Bonus
25 Calculation Table unless specified otherwise as

1 follows.

2 Do you see that?

3 A I do.

4 Q And then it has one, two, three, four,
5 bullet points. It says: Loan scenarios listed in
6 1.4.A will earn the BPS indicated in 1.4.A.

7 No Override Bonus is paid on loan
8 scenarios listed in 1.4.B.

9 Override Bonus to RM will be reduced by
10 the amounts shown in 1.4.C.

11 And then, The Override Bonus to Regional
12 Manager will include the Override Bonus Add-on
13 shown in 1.4.D, if indicated by 1.4.D.

14 Do you see that?

15 A I do.

16 Q Okay. And then if you go to the next
17 page, it has an Override Bonus Calculation Table
18 and that's SPEARMAN0671.

19 A Uh-huh, yep.

20 Q Okay. And it says: Loan Volume and
21 Units Originated by Territory to be split
22 70 percent to Kelly, 30 to Gina: (see 1.4.B for
23 loans excluded from the override payout).

24 Do you see that?

25 A I do.

1 Q And is this excluding these type of loans
2 from the loans excluded from the override payout on
3 the previous page?

4 So you have those four buckets on the
5 previous -- the four bullet points on the previous
6 page. Do you see that?

7 A Let's see. It looks like...

8 Yeah, so if you look at that last
9 paragraph on SPEARMAN670, those -- that list.
10 Piggyback Junior Lien Loans, closed end second lien
11 loans, Secondary Market Issue loans.

12 It looks like it repeats that in the
13 little parenthesis there on the schedule.

14 Q Okay. And if you look at the first
15 paragraph, it says under 1.4, the Override Bonus
16 Calculation Table says the Units funded by managed
17 branches during a calendar month will receive the
18 BPS shown in the table unless otherwise specified
19 -- unless specified otherwise, correct?

20 A Correct.

21 Q If you go to 671 -- and we just looked at
22 the override calculation table. And then it does
23 say, excluding Piggyback, Jumbo, Junior Lien Loans
24 and Secondary Market Issue Loans, correct?

25 A Correct.

1 Q Okay. If you go to 1.4.A, the following
2 loan scenarios will not receive the Override Bonus
3 shown in the above table but will instead receive
4 the BPS shown as indicated below.

5 And it says: Branch Jumbo Funded Loans
6 (excluding Kelly): Max 20 BPS (70 percent to Kelly,
7 30 percent to Gina Spearman).

8 So based on this, was Gina to be paid on
9 jumbo loans at 20 BPS?

10 A Yeah, so the way I read that, so if you
11 -- the first part of the contract is the top. So
12 the Override Bonus Calculation Table, which,
13 remember, this is boilerplate. So it's saying that
14 your jumbo loans are excluded.

15 And then we've got a carve-out here in
16 1.4.A that says, okay, we are going to pay jumbo
17 funded loans up to a max of 20 BPS. And then
18 they're doing -- Kelly and Gina are doing their
19 split.

20 That's the way I read that.

21 Q Okay. Okay. So you have a carve-out on
22 the jumbo loans --

23 A Yes.

24 Q -- where Ms. Spearman was supposed to
25 receive overrides on BPS?

1 A Yeah, according to this contract, that's
2 the way I read it.

3 Q Okay. Now, if you go to 1.4.B, it says:
4 No Override Bonus will be paid on the following
5 loans.

6 Do you see that?

7 A I do.

8 Q And it's got eight bullet points.

9 The first one says, none will be paid on
10 a Regional Manager Personal Loan Production,
11 Brokered Loans, Down Payment Assistance Loans,
12 Secondary Market Issue Loans.

13 And I asked you earlier on these four
14 categories, you didn't -- you testified you didn't
15 know if Ms. Spearman was being paid overrides at
16 Caliber for these type loans?

17 A Yeah, I do not know.

18 Q Okay. And then it also says, Piggyback
19 Junior Lien Loans and Loans that have a GFE/LE
20 Application date that precedes the effective date
21 of a schedule. And then Loan Applications taken
22 during the Monetary Guaranty Period.

23 Do you see those bullet points?

24 A I do.

25 Q And if you go to the next page,

1 SPEARMAN0672, it has a line that says "Yes" and a
2 line that says "No, not applicable to this Area
3 Manager Schedule."

4 Do you see that?

5 A I do.

6 Q Okay. And "No, not applicable to this
7 Area Manager schedule 1" is marked, correct?

8 A That is correct.

9 Q Okay. Did NAF ever pay overrides on any
10 of the loans in these buckets -- in these bullet
11 points?

12 A So are you -- can you clarify your
13 question? Are you asking specifically?

14 Q Yes. So the box "no" is checked,
15 correct?

16 A Correct.

17 Q Do you agree that by checking, "No, not
18 applicable to this Area Manager Schedule" means
19 that these overrides are payable on the loans
20 listed?

21 A Yes.

22 Q Okay. Because it -- at the beginning of
23 Paragraph 1.4.B says "No Override Bonus will be
24 paid." And then it's marked, "No, not applicable."

25 So it's a double negative meaning

1 overrides will be paid; is that correct?

2 A Yeah, I mean, I can't testify to how this
3 contract was written, but it's -- the box is
4 checked, "No, not applicable to this Area Manager
5 Schedule 1."

6 Q So Ms. Spearman should have been paid on
7 -- based on the contract, Ms. Spearman was to be
8 paid overrides on these bullet points of loans
9 listed, correct?

10 MR. PERLOWSKI: Object to the form.

11 A Yeah, that's what it looks like.

12 BY MS. GIBSON:

13 Q Do you know if she was paid overrides on
14 these types of loans listed under 1.4.B?

15 A I don't -- I don't know if she was or
16 not. I -- I wasn't part of the commissions
17 calculations group every month.

18 Q So who would know if she was paid
19 overrides on these type loans?

20 A Jan Preslo.

21 Q Okay. And then if you look at 1.4.C, it
22 says: The following items will be deducted from
23 the Override Bonus Calculation.

24 And it says: Any portion of the RM's
25 biweekly salary if not already deducted from the

1 commissions.

2 And then has another bullet point that
3 says: ASA/Desk Rental Allocation.

4 Do you see that?

5 A I do.

6 Q And then there's a "Yes" and a "No, not
7 applicable to this area -- this Regional Manager
8 Schedule 1." And do you see that "no" is checked?

9 A I do.

10 Q So, again, it's a double negative. It
11 says, these items will be deducted from her
12 override but it's marked, "no, not applicable,"
13 correct?

14 A That's correct, it's marked "no."

15 Q Do you know if NAF deducted ASA/rentals
16 from Gina's pay?

17 A I do not know.

18 Q But based on this, it should not have; is
19 that correct?

20 MR. PERLOWSKI: Object to the form.

21 A Yes.

22 BY MS. GIBSON:

23 Q Based on the provision 1.4.C being marked
24 "no," NAF should not have deducted ASA/rentals; is
25 that correct?

1 A Yes, that's the way it reads.

2 MR. PERLOWSKI: Object to the form.

3 BY MS. GIBSON:

4 Q Okay. And then 1.4.C has another loan --
5 another bullet point right there. It says:
6 Regional manager will be reduced 5 BPS on
7 candidates sourced by internal or external
8 recruiters.

9 And it has a "Yes" and a "No, not
10 applicable to this Regional Manager Schedule."

11 Do you see that?

12 A I do.

13 Q And it's checked "no," correct?

14 A That's correct.

15 Q Okay. So again, it says her comp will be
16 reduced by BPS but says it's not applicable, so it
17 should not -- her comp should not have been reduced
18 5 BPS; is that correct?

19 MR. PERLOWSKI: Object to the form.

20 A That's correct.

21 BY MS. GIBSON:

22 Q Do you know if NAF reduced Gina's pay by
23 5 BPS on candidates sourced by recruiters?

24 A As far as I know, no. And I think the
25 reason, if I remember correctly, why we didn't do

1 that is because everybody was coming over together.

2 So, as I said, Paul Pritchard was
3 recruiting Kelly and Gina. And then they were in
4 turn recruiting all of their team.

5 So it didn't really make sense to deduct
6 overrides from them when they were all on a
7 guaranty anyway.

8 Q And what about subsequent hires? This
9 would apply to subsequent hires, correct?

10 A Correct.

11 Q Okay. And then 1.4.C has another bucket
12 -- another bullet point that says: Overrides to
13 Authorized Personnel that are identified on the
14 Overrides to Authorized Personnel if indicated
15 below.

16 And it says, "No, not applicable to this
17 Regional Manager Schedule," correct?

18 A Yes, it's checked "no."

19 Q So were these items deducted from Gina's
20 compensation, do you know?

21 A I do not know.

22 Q And who would know that?

23 A Jan Preslo should know that.

24 Q And then there is a subparagraph 1.4.D,
25 do you see that?

1 A I do.

2 Q And it says: Where applicable, the
3 Regional Manager will be paid an Override Bonus
4 Add-on as shown on the Comp Differential indicated
5 below.

6 And it's got a "yes" and a "no" and it's
7 marked, "No, not applicable to this period -- to
8 this Regional Manager's Schedule 1."

9 Do you see that?

10 A I do.

11 Q And so what does this mean? What are the
12 override bonus add-ons?

13 A I'd have to go to the compensation
14 differential schedule to clarify. I don't know off
15 the top of my head.

16 Q Okay. But it's marked, "no, not
17 applicable," correct?

18 A That's correct.

19 Q So each of these -- this Page 0672 has a
20 "yes" and "no" line after each category? Correct,
21 NAF -- NAF put a "yes" and "no" line after each
22 item?

23 A Yep.

24 Q Okay. And now the previous page for
25 1.4.B, there's just a yes-and-no line at the end of

1 the list, correct?

2 A Correct, this is the same form all the
3 way down.

4 Q Yeah. And it's marked, "no, not
5 applicable" to this area manager's schedule,
6 correct?

7 A Yes.

8 Q And so, I understood your testimony
9 earlier is that, "no, not applicable," meant that
10 Ms. Spearman should have been paid overrides on
11 those bullet points listing those loans; is that
12 correct?

13 MR. PERLOWSKI: Object to the form.

14 BY MS. GIBSON:

15 Q You can answer.

16 A Yes, according to this. Although,
17 there's -- up on top where the override bonus
18 calculation table and then the 1.4.A, there's
19 things that carved that out as well.

20 Q Right. So the calculation table states
21 it excludes jumbo loans, but then 1.4.A carved out
22 jumbo loans and said she'd actually be paid an
23 override on jumbo loans, correct?

24 A Correct.

25 Q Okay. And NAF drafted this document; is

1 that correct?

2 A That's correct.

3 Q Okay. Okay. Can you turn to Page 5 of
4 this Schedule 1, and it's SPEARMAN0673.

5 A Yep, I'm there.

6 Q Okay. And if you read that, that's
7 Paragraph -- I want you to go to Paragraph 4, the
8 last paragraph. And again, this page is e-signed
9 by Ms. Spearman and her initials are on there; is
10 that correct?

11 A Yes.

12 Q And it says: Modification of
13 Compensation. Regional Manager's Compensation
14 including but not limited to: Commissions and
15 Override Bonus may be restructured and/or adjusted
16 up or down by the Company, in its sole discretion.
17 Regional manager shall be provided notice of any
18 adjustments as required by law.

19 Do you know what that means?

20 MR. PERLOWSKI: Object to the form.

21 You can answer.

22 BY MS. GIBSON:

23 Q You can answer.

24 A I think it means exactly what we do at
25 New American. So we send them their agreement so

1 that they can see it in writing, and our common
2 practice is to also notify people that -- within 30
3 days of the compensation change.

4 Q And that's you -- when you said you send
5 them the agreement, you send them the agreement via
6 the, I think you called it, Adobe e-sign --

7 A Yes.

8 Q -- system?

9 A I don't know if we were using Adobe back
10 in 2016 when Gina was signing this agreement, but
11 it's obvious that we were using some sort of e-sign
12 system. We do currently use Adobe. My guess is we
13 were using it back then.

14 Q Okay. Did NAF provide notification of
15 changes to Ms. Spearman's compensation in writing?

16 A Yes.

17 Q When?

18 A I don't know the dates off the top of my
19 head.

20 Q Are you aware of a March 1, 2020
21 amendment that -- to Schedule 1 that changed the
22 compensation?

23 A I'd have to review the dates and the
24 compensation agreement. I don't -- I don't know
25 the specifics of the dates or the date -- or of the

1 specifics of the contract or the date.

2 Q Okay.

3 MS. GIBSON: We've been going about an
4 hour and a half. Do you want to take a short
5 break, Henry?

6 MR. PERLOWSKI: Yeah, that would be
7 great. Thank you.

8 (Recess taken 12:27 - 12:42 p.m. EST)

9 MS. GIBSON: We can go back on the
10 record.

11 BY MS. GIBSON:

12 Q Ms. Bunce, earlier when I was asking you
13 what documents you reviewed, you testified you
14 looked at a January through November P&L. Was that
15 P&L in Kevlar?

16 A No, it was a P&L that Jim Muth had sent
17 me.

18 Q I'm sorry, can you repeat that?

19 A It was a P&L that Jim Muth had sent me.

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 Q And it was for -- it was the P&L for just
2 the outside retail?

3 A Correct.

4 Q Is that the same as capital markets?

5 A No, outside retail and capital markets
6 are not the same thing.

7 Q Okay. What is outside retail?

8 A Outside retail is the division that Kelly
9 and Gina worked for. It's our true retail line.

10 Q True retail. And what is capital
11 markets?

12 A Capital markets is a department at New
13 American Funding.

14 Q And what do they do?

15 A They manage all of the pricing and
16 finance.

17 Q Okay. When was that P&L created?

18 A That was a P&L that he had pulled up from
19 2018 as far as I know.

20 Q So he pulled it up from 2018. Was the
21 data input into it in 2018 or was that created more
22 recently?

23 MR. PERLOWSKI: Object to the form.

24 BY MS. GIBSON:

25 Q You can answer.

1 A So it was back from 2018.

2 Q So it would have been generated in 2018
3 contemporaneously with the data from that time
4 period?

5 A I don't know exactly when he put together
6 that P&L, but I know it was in 2018.

7 Q Okay. And why did he send you the 2018
8 P&L for outside retail for that -- for just that
9 time period?

10 A It would --

11 MR. PERLOWSKI: Ms. Bunce, I caution you
12 to the extent that your answer would reveal a
13 privileged communication.

14 BY MS. GIBSON:

15 Q You can answer.

16 MR. PERLOWSKI: You can answer subject to
17 that.

18 A Okay. So, yes, it was asked of me to
19 review from legal counsel.

20 BY MS. GIBSON:

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 Q And was this for the entire United
2 States?

3 A It was.

4 Q And what did it show for the Southeast
5 region?

6 A I don't have it in front of me. I don't
7 know exactly what it was. I was just looking at
8 the bottom line. I don't even think it was -- I
9 don't think it was even broken up by region
10 actually.

11 Q Do you have spreadsheets, if not P&Ls,
12 that break it out by region so you can determine
13 what regions are profitable?

14 A Yes, we do that.

15 MR. PERLOWSKI: Objection.

16 BY MS. GIBSON:

17 Q Okay.

18 MS. GIBSON: Henry, has that P&L been
19 produced?

20 MR. PERLOWSKI: Excuse me?

21 MS. GIBSON: Has the January-November
22 2018 P&L that she's testifying about, has that been
23 produced?

24 MR. PERLOWSKI: I'm not -- Mr. Ogletree
25 stepped out. I'm not specifically sure, but I'll

1 ask him once he gets back into the room. He just
2 stepped out for a minute.

3 MS. GIBSON: Okay. Thank you.

4 MR. PERLOWSKI: But that was the subject
5 of the Court's -- I mean, that's -- the topic we're
6 talking about now is the subject of an order that
7 came out two days ago, so.

8 Where your motion to compel on her loan,
9 P&Ls was denied, and the Court said if you have
10 regional P&Ls, go ahead and produce them.

11 BY MS. GIBSON:

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 Q Okay. And so, I understood from
2 testimony from Mr. Obradovich there's a difference
3 in looking at revenue and bottom line.

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 MR. PERLOWSKI: Object to the form. I'm
9 not even sure there's a question in there, but I'm
10 going to object to the form.

11 [REDACTED]
12 [REDACTED]

13 A Yeah. So --

14 MR. PERLOWSKI: Objection, asked and
15 answered.

16 Go ahead.

17 A So every profit and loss that I know has
18 revenue and has expenses and then has a bottom
19 line. So you look at the bottom line to determine
20 if something is profitable or not.

21 BY MS. GIBSON:

22 Q Mr. Obradovich also testified that he had
23 60 employees report to him and all changes to comp
24 to employees that report to him are in writing and
25 are signed by the employee and NAF.

1 Is there any reason that his department
2 has a different policy regarding changes to
3 compensation versus other departments?

4 MR. PERLOWSKI: Object to the form,
5 mischaracterizes testimony.

6 You can answer.

7 A So the policy is that we present the
8 compensation changes to every employee. Whether we
9 get them signed or not isn't -- isn't a policy that
10 we have to have the employee sign. Most managers
11 are able to get their employees to sign their
12 agreements.

13 He has a much smaller department than a
14 lot of departments, so it's easier to manage that
15 also.

16 BY MS. GIBSON:

17 Q Okay. So 60 employees is a smaller
18 department than other departments?

19 A Yes.

20 Q Okay. Okay. After Ms. Spearman came to
21 work for NAF, was she happy?

22 MR. PERLOWSKI: Object to the form.

23 A Do you want me to answer that? She's
24 sitting right there. Probably ask her.

25 No, I think that she was happy. You

1 know, we had a lot -- Gina and I had a lot of
2 interaction. We talked a lot about the region as a
3 whole and how they were getting things done and how
4 we were working together and transition is very
5 hard. So Gina and I had a lot of conversations.

6 And that is something that is important
7 to New American, is that employees are happy, as I
8 think most of us especially in the mortgage
9 industry spend more time working than with our
10 families.

11 BY MS. GIBSON:

12 Q Okay. Did Ms. Spearman communicate to
13 satisfaction to you regarding how she was paid
14 under her contract?

15 A As far as I remember early on, yes. I
16 think Gina was happy with her compensation package.

17 I do remember and I do not recall what
18 year it was that Kelly had mentioned that Gina had
19 gone to her questioning whether she should have a
20 bigger split of the override BPS. And I know Kelly
21 was a little bit upset with the request, but I
22 think they did end up working that out.

23 But that really doesn't have anything to
24 do with NAF because Kelly controlled the
25 compensation that was paid to Gina.

1 Q Did Ms. Spearman express dissatisfaction
2 to you regarding the fact she wasn't being paid
3 overrides on the bullet points under 1.4.B that we
4 just discussed?

5 A Not that I recall.

6 Q Okay. So I want to introduce -- so, to
7 your recollection, she never expressed
8 dissatisfaction or concern that she wasn't being
9 paid according to her contract and the override
10 bonuses identified in her contract?

11 A Not that I recall. The big bone of
12 contention with Kelly and Gina on that initial
13 contract was the override bonuses on the employees
14 that were on the guaranty.

15 I don't know if you look at that
16 schedule, that's why that box is marked "no," so
17 that they would get -- be -- they would be being
18 paid their override bonuses when all of those loan
19 officers that they brought over were on their
20 guaranty, which is not typical for New American.

21 Q Right. And you actually testified
22 earlier that "no" applied to all of those loans
23 identified under 1.4.B that she should have been
24 paid overrides on.

25 And so I wanted to know, because then

1 I'll introduce some discovery responses that NAF
2 provided to us where she -- where NAF has admitted
3 that she expressed dissatisfaction.

4 So I was wondering what you know about
5 Ms. Spearman expressing dissatisfaction about not
6 being paid?

7 MR. PERLOWSKI: Objection,
8 mischaracterizes testimony, asked and answered.

9 Subject to that, go ahead, Ms. Bunce.

10 A Yeah, as far as I can remember it and
11 it's -- you know, it's been quite a few years, but
12 the big bone of contention, like I said, was when
13 they were first coming over that they wanted to get
14 paid their overrides on their loan officers that
15 were under guaranty.

16 So that's why we marked that box no on
17 1.4 -- I can look at it -- 1.4.B.

18 BY MS. GIBSON:

19 Q Right.

20 A So that they would get paid their
21 overrides. So I don't think that was a bone of
22 contention with Gina.

23 And then -- and then --

24 Q What was the bone of contention?

25 MR. PERLOWSKI: Will you please continue

1 your answer, Ms. Bunce.

2 BY MS. GIBSON:

3 Q Go ahead.

4 A Yeah. So, I mean, if -- if you want me
5 to stop answering, but I --

6 MR. PERLOWSKI: Please continue your
7 answer, Ms. Bunce.

8 A So the real -- the bone of contention
9 that I remember with Gina was in 2019, so I don't
10 think you've gotten to that point yet.

11 BY MS. GIBSON:

12 Q Okay. So you don't remember any
13 complaints she made to you about not being paid the
14 overrides on the loans you testified to that she
15 should have received under 1.4.B?

16 A I do not --

17 MR. PERLOWSKI: Object to the form,
18 mischaracterizes testimony.

19 Go ahead.

20 A Yeah, I don't -- I do not. As I said
21 before, the big contention was the guaranty period,
22 and we marked that box "no" so that she would get
23 paid the overrides on the -- on the LOs that were
24 under their guaranty.

25 BY MS. GIBSON:

1 Q Okay. Let's go back to that exhibit
2 because I want to make sure I have your testimony
3 clear and what I understood your testimony before.

4 A Okay.

5 Q And I understood we took a break and I
6 don't want to know what you talked about with your
7 counsel, but I just want to make sure you're not
8 changing your testimony.

9 So if we go back to Bates No. 0648 and it
10 was Exhibit 2. And if you can turn to
11 SPEARMAN0671.

12 A Okay.

13 Q And 672. We went through both of those
14 pages and discussed the fact that "no" was checked
15 with respect to those subparagraphs, correct?

16 MR. PERLOWSKI: Object to the form.

17 A That is --

18 BY MS. GIBSON:

19 Q You can answer.

20 A That is correct. So I think maybe where
21 I misspoke was that that "no" on 1.4.B, that does
22 apply to that bullet point about the loan
23 applications taken during monetary guaranty period.

24 Q Okay.

25 A And I think you will, when you review

1 Gina's pay statements, you will see she was paid on
2 all of those loan officers that were under
3 guaranty.

4 That is my impression. Like I said, I
5 don't review the pay statements, but that is my
6 understanding.

7 Q Okay. And earlier -- I understand that.
8 We talked about 1.4.B and it said "No Override
9 Bonus will be paid on the following loans." And
10 there are one, two, three, four, five, six, seven,
11 eight bullet points.

12 And you testified -- and we looked at
13 "Yes"; "No, not applicable to this Area Manager
14 Schedule."

15 And you testified that Ms. Spearman
16 should have been paid overrides on each of those
17 loans identified under 1.4.B. Do you recall that?

18 A Yes. And I think I misspoke there
19 because I did also state before that, that we don't
20 pay management overrides on brokered loans or down
21 payment assistance and bond loans.

22 Q Okay. Did you do anything during the
23 break that refreshed your memory about that?

24 A I did review this agreement when we went
25 off line.

1 Q Okay. And who did review it with?

2 A I -- I reviewed it myself.

3 Q Okay. And what -- what about that when
4 we specifically read through the bullet points,
5 when you and I were reviewing it, what was
6 different that made you change your testimony about
7 the overrides that were supposed to be paid on
8 these loans?

9 A Yeah, it was --

10 MR. PERLOWSKI: Object to the form.

11 THE WITNESS: Sorry.

12 MR. PERLOWSKI: Ms. Bunce, give me a
13 moment after a question to potentially assert an
14 objection --

15 THE WITNESS: Sorry.

16 MR. PERLOWSKI: -- because Ms. Gibson is
17 admittedly rushing. She's rushing. So just --

18 MS. GIBSON: Henry, I'm not rushing. I
19 do --

20 MR. PERLOWSKI: -- give me a moment to --

21 MS. GIBSON: I tend to talk fast, Henry,
22 and I apologize. I am from New York so I have a
23 faster pace.

24 MR. PERLOWSKI: So am I. So am I.

25 BY MS. GIBSON:

1 Q Ms. Bunce, you are welcome to take as
2 much time --

3 MR. PERLOWSKI: You're rushing and we're
4 going to slow it down.

5 BY MS. GIBSON:

6 Q You are welcome to take as much time as
7 you need to answer the questions, Ms. Bunce.

8 A So when you were questioning me before we
9 took the break, it was sticking in my head as I was
10 reading through this, and I should have read
11 through it more thoroughly to refresh my memory on
12 these agreements, because I didn't see that bullet
13 lines that says Brokered Loans and DPA Loans.

14 I know that none of our managers are paid
15 on brokered loans and DPA loans.

16 So then I had to reread through the whole
17 agreement again, that section, to refresh my
18 memory, so.

19 And then I did recall that we had a lot
20 of conversation about the LOs that were on
21 guaranty. So it was a big bone of contention with
22 Kelly and Gina.

23 And honestly, I agreed with them because
24 it was a huge group of people that were coming over
25 that they would be excluded from getting overrides

1 because they were -- if I remember right, those
2 loan officers were on an extended guaranty period.
3 Mostly because they do builder business and they
4 were -- they had month -- year-end closings. I
5 think it was in March.

6 So there was quite a bit of time where
7 there would be a lot of application activity, but
8 not a lot of funding activity.

9 So we had come to the agreement with them
10 that we wouldn't pay them their override bonuses
11 even though their loan officers were under
12 guaranty.

13 Q And that's what this bullet point says,
14 correct?

15 A Right, loan applications taken during
16 monetary guaranty period.

17 Q Right.

18 And so earlier when we read through the
19 bullet points and I read Regional Manager Personnel
20 Loan Production, Brokered Loans, Down Payment
21 Assistance Loans, Secondary Market Issue Loans,
22 Loans where the Regional Manager elects in writing
23 to waive all override comp, Piggyback Junior Loans,
24 Loans that the application date was previously --
25 precedes the effective date of this Schedule.

1 So when I read those earlier, you didn't
2 -- you didn't -- I'm just trying to understand, you
3 didn't know that NAF never pays on those loans?

4 A No, no, no, I did know.

5 MR. PERLOWSKI: Wait, wait, wait. Object
6 to the form, mischaracterizes testimony.

7 You can answer.

8 A Yeah. So I did know and I should have
9 stopped right then and there and said that I needed
10 a minute to reread this because it was sticking in
11 my head that I wasn't interpreting it correctly to
12 you.

13 So when we took the break and I ran to
14 the restroom, I came back and looked at this
15 thing -- this agreement again and that's when it
16 refreshed my memory of exactly what had happened
17 when we were negotiating Kelly and Gina's contract.

18 BY MS. GIBSON:

19 Q Did you speak with anyone during the
20 break?

21 A I did not.

22 Q Okay. I wanted to introduce the initial
23 disclosures.

24 A Are you uploading a new document?

25 Q Yes, I am. Just give us a minute.

1 MR. PERLOWSKI: Sure.

2 (Deposition Exhibit 3 marked.)

3 BY MS. GIBSON:

4 Q If you refresh your screen, you should be
5 able to pull it up.

6 MR. HARGROVE: And I'm sorry, do we need
7 to refresh it each time? That's a stupid question
8 on my -- yes? Okay, got it. Thanks. I see Judi
9 nodding yes. Just that it takes -- the reload
10 takes 16 or 20 seconds or so at least.

11 A Okay, I got it. It's still thinking.

12 BY MS. GIBSON:

13 Q Before we went back to the contract, I
14 was asking you about communications you had with
15 Ms. Spearman regarding her dissatisfaction with her
16 compensation. Do you remember that?

17 A Yes.

18 Q Okay. So if you go to Page 12 of the
19 initial disclosures, you're identified as a
20 witness.

21 Do you see that in the third bullet
22 point, identifies "Communications with Plaintiff
23 regarding her compensation"?

24 A Yes.

25 Q But you don't recall conversations with

1 Ms. Spearman about -- that she had with you
2 regarding her dissatisfaction regarding payment of
3 override bonuses?

4 A I don't think --

5 MR. PERLOWSKI: Object to the form --
6 object to the form, mischaracterizes testimony.

7 You can answer.

8 A Yeah. So when I said that I was the
9 correct person to talk about compensation, I think
10 that I am the correct person to talk about
11 compensation.

12 I was involved in a lot of conversations
13 with Kelly and Gina about their compensation when
14 they came on.

15 I was also involved in conversations with
16 Kelly and Gina after we made the changes in
17 compensation that we did in 2019.

18 The screen just changed. Are you guys
19 still there?

20 BY MS. GIBSON:

21 Q Yeah, we're here. Do you see us?

22 A Yeah. You went blank there for a minute.

23 MR. PERLOWSKI: Oh, it looks like someone
24 else has joined from your firm. I think that may
25 be it. I see them in the upper right-hand corner

1 -- in my view, I see them in the upper right-hand
2 corner, but then there's another -- The Finley Firm
3 that's just dark, at least video. So someone else
4 has probably joined from your firm, from
5 Ms. Spearman's counsel's firm.

6 MR. JACKSON: It's Nick Jackson. Sorry,
7 I'm logging back in.

8 MR. PERLOWSKI: Welcome, Nick.

9 MS. GIBSON: Can the court reporter read
10 back the last question. I think, Ms. Bunce, you
11 were testifying.

12 THE WITNESS: Do you want her to read it
13 back or do you want to restate your question?

14 MS. GIBSON: Let's let her read it back.
15 (Whereupon, the requested portion of
16 the record was read by the reporter.)

17 THE COURT REPORTER: Okay. So the
18 question is:

19 "But you don't recall conversations with
20 Ms. Spearman about -- that she had with you
21 regarding her dissatisfaction regarding
22 payment of override bonuses?"

23 And then there was an objection and then
24 you gave a big answer which I can read if you want.

25 THE WITNESS: I don't need you to read

1 it.

2 THE COURT REPORTER: Okay. Do you need
3 me to read it, MaryBeth?

4 MS. GIBSON: No, I don't need you to read
5 it.

6 BY MS. GIBSON:

7 Q I understood your answer to be you had
8 conversations with her about her compensation.

9 My question is, do you recall any
10 conversations where she complained to you that she
11 wasn't being paid properly?

12 A I don't recall conversations that we had
13 about that.

14 Q If she -- do you know who would -- who
15 she would have complained to about compensation, if
16 not you?

17 A Well, if not -- well, if it wasn't me, it
18 was probably Kelly, and I'm assuming Jan Preslo
19 because Jan was the one that was involved in the
20 commission override bonus schedules.

21 It could have been Jon Reed as well who
22 is no longer with the company.

23 Q Okay. And this Exhibit 3 states that you
24 also have information of "NAF notices to Plaintiff
25 regarding her compensation and changes thereto,

1 including NAF's efforts to inform plaintiff of each
2 compensation change in real-time."

3 Do you see that?

4 A Yes. And I think I've covered that
5 today, but I can definitely state our practices
6 again.

7 Q No, I understand your practices and how
8 you go about changes. When was the first time you
9 changed Ms. Spearman's compensation?

10 A As I stated before, I'd have to go
11 through her agreements which I'm assuming are a
12 part of the exhibits to give you the actual dates.

13 Q Okay. Are you familiar with the March 1,
14 2020 amendment to Schedule 1?

15 A I'd have to read it to look at the
16 details.

17 Q Okay. Well, let's look at SPEARMAN687.

18 MR. PERLOWSKI: Sorry, is this a new
19 exhibit?

20 MS. GIBSON: It is, Henry.

21 (Deposition Exhibit 4 marked.)

22 MR. PERLOWSKI: Thank you.

23 A Just let us know when we should refresh.

24 MR. PERLOWSKI: I do think we do need to
25 reload. That's why I asked if it was a new

1 exhibit.

2 Ms. Bunce, so go ahead and reload.

3 A Okay, I can see it.

4 BY MS. GIBSON:

5 Q Okay. And we're getting the actual
6 schedule loaded, too, but this is Exhibit 4.

7 Again, do you recognize this as Exhibit
8 -- I'm sorry, an email from you to Ms. Spearman,
9 Mr. Frommert, Kelly Allison, Michael Bartyczak, Jan
10 Preslo and Patty Arvielo?

11 A Yeah.

12 Q And you can take a minute and look at the
13 email if you like.

14 A Yeah, let me read it real quick.

15 Q Sure.

16 A (Witness reviews document.)

17 Okay.

18 Q And so this is -- it says -- the Subject
19 line is "SVP Schedule 1: Kelly and Gina."

20 Do you see that?

21 A I do.

22 Q Does this refresh your recollection about
23 a March 1, 2020 amendment to Schedule 1?

24 A Yes, yes.

25 Q Were you involved in drafting that

1 amendment?

2 A I did not draft the amendment. Those
3 were also done in our human resources department on
4 the direction of Scott Frommert, who was our CFO at
5 the time. And this is pertaining to when we were
6 moving all of our SVPs over to a P&L model.

7 Q Is this the first time NAF amended
8 Ms. Spearman's compensation by a written agreement?

9 MR. PERLOWSKI: Object to the form.

10 BY MS. GIBSON:

11 Q You may answer.

12 A As I recall, no. I think there was
13 another amendment earlier on.

14 Q Do you recall when that amendment was?

15 A No.

16 Q Do you recall how it -- as NAF's 30(b)(6)
17 witness, do you recall how it changed her
18 compensation?

19 MR. PERLOWSKI: Object to the form.

20 A Yeah, as far as I remember, it -- I think
21 it amended some of the override language, but I'd
22 have to look at it again.

23 BY MS. GIBSON:

24 Q Okay. Okay. Well, we've loaded and you
25 should be able to refresh your screen, SPEARMAN709

1 and 697.

2 (Deposition Exhibit 5 and Exhibit 6
3 marked.)

4 MR. PERLOWSKI: So Exhibits 5 and 6 have
5 been reloaded. Which exhibit would you like
6 Ms. Bunce to pull up?

7 MS. GIBSON: Bates number ending in 709,
8 Exhibit 5.

9 MR. PERLOWSKI: Thank you.

10 A Okay, I've got it.

11 BY MS. GIBSON:

12 Q Okay. And so this is an email from Scott
13 Frommert to Gina Spearman and it cc's you and Jan.
14 And it has an attachment.

15 And it says: With our updated terms and
16 signature line. I have signed the PDF and would
17 like for you to print and sign that and return that
18 to me. I know it is later in the day, but am
19 hoping to get this back today.

20 Do you see that?

21 A I do.

22 Q And he wrote this email a little after --
23 later in the day after Exhibit 4, your email, on
24 the same day which was earlier that morning,
25 correct?

1 A I would have to go back and look at the
2 time of the email, but I can assume that's correct.

3 Q Yeah. And I represent to you it says
4 11:37 a.m.

5 A Yeah, yeah, yeah.

6 Q It was regarding Schedule 1.

7 And then if you open -- and he's
8 requesting that Gina sign it, print it, sign it and
9 return it, correct?

10 A Yes, that's what it says.

11 Q Were you always cc'd on communications
12 with regional managers about their contracts?

13 A I can't say if I always was. I
14 definitely was probably more often than not.

15 Q So as COO, is that -- does that fall
16 under your bucket of job responsibilities?

17 A You know, I think COOs at different
18 companies have different jobs, but because we were
19 definitely a bottom-up company and we've grown a
20 lot over the years, I -- I am cc'd on a lot of
21 different things. So I try to be in the loop on
22 most everything that goes on.

23 Q Do regional managers report to you?

24 A They do not.

25 Q Okay. And so, do branch managers or area

1 managers?

2 A They do not.

3 Q Okay. But you just testified you're
4 generally cc'd on emails about their contracts --
5 about regional manager contracts; is that correct?

6 A Yeah, I would say that I probably am cc'd
7 on most of them. I mean, I don't know what I don't
8 know. So if things are going out without me being
9 cc'd, then you know.

10 Q In March of 2020, how many regional
11 managers did NAF employ?

12 A Well, not very many. So we kind of
13 lumped Gina into the SVP category. It was that
14 high level sales leadership group. And I think at
15 that time there was seven or eight.

16 Q And so have you -- can you open
17 Exhibit 6?

18 A Yep, I got it open.

19 Q And this is the written agreement --
20 written amendment to Schedule 1.

21 Is this the written amendment to Schedule
22 1 that changed Ms. Spearman's compensation in March
23 of 2020?

24 A Yeah. Let me just look through it real
25 quick.

1 Q Sure.

2 A Yes, this is.

3 Q Okay. And if you go to the last page,
4 702, you see that Scott Frommert signed it,
5 correct?

6 A Correct.

7 Q And this -- so this amendment was sent to
8 Ms. Spearman by Scott Frommert and cc'd you. How
9 did this amendment change her compensation?

10 A This amendment was when we changed the
11 whole outside retail model from a straight BPS
12 override compensation model to a P&L compensation
13 model. Kelly and Gina had negotiated a small BPS
14 as well, but it was mostly P&L.

15 Q And was a similar schedule, amended
16 Schedule 1, given to Ms. Allison?

17 A Yes.

18 Q Was it also given to the other SVPs that
19 you said were in the region at the time?

20 A Correct, yes. All of outside retail was
21 changed at the same time.

22 Q Okay. Did -- did it change branch
23 managers and area manager compensation as well?

24 A That was really dictated by the regional
25 managers, the SVPs. It was really dictated by them

1 of how they were going to change or not change the
2 compensation underneath them as far as their
3 managers go.

4 Q Do you know who Eric Fellows is?

5 A I do.

6 Q Okay. Would he have been required -- did
7 his compensation change by the March 1, 2020
8 amendment?

9 A Not that I recall. His -- he was -- he
10 didn't have a big enough region to go on to a P&L
11 model.

12 Q So only regions that were -- when you say
13 big enough, what do you mean?

14 A Well, we didn't -- we didn't look at Eric
15 and Michelle as the same group as Kelly and Gina
16 and our other SVPs.

17 So they were running prolific regions
18 that had grown quite a bit. They had been at New
19 American for quite some time.

20 And most of them actually were -- were
21 kind of forcing our hand to move to a P&L model.
22 It was something that they wanted to do. So that's
23 kind of how we determined.

24 Q All right. Go ahead. Sorry.

25 A Oh, I was going to say that's how we --

1 you know, we determined what the right course of
2 business was for those regions.

3 Q So you say most of them wanted to go to a
4 P&L. Did Ms. Spearman want to go to a P&L?

5 A It really wasn't up to Gina, it was up to
6 Kelly, and Kelly was one of the ones that actually
7 -- she was actually from the very beginning, from
8 the time we met her, asking us to develop a P&L
9 model.

10 Q Okay. And you said you didn't put Eric
11 Fellow's region on a P&L model, just the really big
12 regions? That's what I understood your testimony,
13 correct me if I'm wrong.

14 When you say big regions, what do you
15 mean, the highly profitable ones?

16 A No, no, no, it was -- it was the regions
17 that had been with New American for quite some
18 time. They had a lot of salespeople underneath
19 them. They had a good established region.

20 Q So when you say you changed the big
21 regions, you mean by -- the regions that had a
22 number of employees?

23 A It wasn't determined by a number of
24 employees, it was just -- it was all the SVPs. So
25 we don't have that many SVPs. And so, it was

1 everybody that was -- an SVP title. They -- they
2 were the ones that were switched to a P&L.

3 Q Okay. And it's your testimony that
4 Ms. Allison wanted to go to a P&L model?

5 A Yes.

6 Q Okay.

7 MR. PERLOWSKI: Ms. Bunce, I don't know
8 if you reloaded, but I think that's what we need to
9 be doing right now.

10 THE WITNESS: Oh.

11 (Deposition Exhibit 7 and Exhibit 8 were
12 marked.)

13 BY MS. GIBSON:

14 Q If you refresh your screen, you should be
15 able to pull up 710 and 703.

16 MR. PERLOWSKI: Open Exhibit 7 first?

17 MS. GIBSON: 710.

18 MR. PERLOWSKI: That's Exhibit 7,
19 Ms. Bunce.

20 A I'm still opening it. It's spinning.

21 Okay, I got Exhibit 7 up.

22 BY MS. GIBSON:

23 Q Okay. And so, we just looked at
24 Exhibit 5 and 6 which was an email from Scott
25 Frommert dated February 28th with the attached

1 Schedule 1.

2 And we've got Exhibit 7 which is an email
3 from Scott Frommert to Ms. Spearman cc-ing you with
4 the attached March 1, 2020 schedule. Do you see
5 that email?

6 A I do.

7 Q He says: Hope things are well. I'm sure
8 you are busy with rates as low as they are. I
9 wanted to follow up on our exchange regarding the
10 compensation discussions and documents.

11 Just to make certain there's no confusion
12 about the terms of your bonus compensation
13 arrangement, Christy and I have each placed our
14 initials on your attached Schedule 1 document that
15 we delivered to you last week.

16 This document is being placed in your
17 Employment file with HR to reflect the terms of
18 your bonus comp that are in place and effective
19 March 1, 2020.

20 Do you see that?

21 A I do.

22 Q What discussions did you have with Scott
23 about sending this email?

24 A I recall that we discussed that, you
25 know, we were making a move to this bonus plan

1 starting March 1st. Everybody had signed their
2 agreements, as far as I recall, except for Gina.

3 So we had talked to our general counsel
4 and just decided that we would put this email
5 together to make sure that she was notified that we
6 were putting this in her file. It was in effect.
7 And just to kind of move on because we were kicking
8 off this new pay plan.

9 Q Did you do this with any other proposed
10 amendment to Ms. Spearman's compensation? When I
11 say "this," did you resend to her an initial other
12 versions of changes to compensation?

13 MR. PERLOWSKI: Object to the form.

14 A Not -- not that I recall.

15 BY MS. GIBSON:

16 Q So can you tell me why it was so
17 important to do it with this version, this change
18 to compensation?

19 A This was a wholesale change for all of
20 our SVPs on how they were compensated. It was a
21 very involved process. One that Scott had worked
22 very, very hard on with the SVPs, including Gina,
23 and gone over with them.

24 And we really had put a lot of time and
25 effort into this because it was a completely

1 different compensation model for New American
2 Funding.

3 So we had put a lot of effort into making
4 sure that our SVPs and everybody that was getting
5 moved to this model would not be taking any sort of
6 pay cut from what they had been earning before.

7 There was a lot of math, a lot of
8 conversations. So it was very important to us that
9 everybody understood it.

10 Q Was NAF affirming the written contract by
11 resending this and not a course of conduct or a
12 verbal agreement?

13 MR. PERLOWSKI: Object to the form.

14 A I don't -- I don't understand the
15 question.

16 BY MS. GIBSON:

17 Q Well, you're resending the written
18 contract. And then we testified earlier a little
19 bit about modifications to material terms of
20 employment.

21 So my question is, I want to know why you
22 resent this written contract twice?

23 A I think it was resent twice because Gina
24 wasn't signing it. We wanted to make sure that she
25 had reviewed it and that she understood that her

1 compensation changes were taking place.

2 Q Do you agree that NAF could not have
3 changed her compensation to this model by just a
4 course of conduct or a verbal agreement?

5 MR. PERLOWSKI: Object to the form.

6 You can answer.

7 A Yeah, our policy has not changed since
8 way before we did a P&L model. So we always felt
9 the correct thing to do is to notify the people
10 that are getting a compensation change and then to
11 send them their amended contract so that they can
12 review it.

13 BY MS. GIBSON:

14 Q And just to confirm, NAF would have
15 something in its system that confirmed that the
16 documents were sent via Adobe; is that correct?

17 A I'm almost a hundred percent sure that
18 Adobe can show those records.

19 Q Who is Scott Frommert?

20 A He was our CFO.

21 Q When was he hired?

22 A Spring 2019, if I remember correctly.

23 Q Who was your CFO before Mr. Frommert?

24 A We did not have a CFO.

25 Q Why was -- why was he hired?

1 A We felt that we needed somebody in that
2 capacity to help with just managing the finances.
3 Our owner of our company and Jason Obradovich, who
4 you met yesterday, really does act in that capacity
5 for the most part.

6 But with moving to a P&L model for the
7 biggest regions that we have, we felt that it was a
8 good step for us to have a CFO.

9 Q Is he still your CFO?

10 A He is not.

11 Q And when did he leave?

12 A I think it was March 2020. Maybe April.
13 Right around that time.

14 Q Why did he leave?

15 A We decided that Scott wasn't a good fit
16 for New American Funding.

17 Q Why wasn't he a good fit?

18 A I don't know if I can answer that
19 actually because it's confidential as to why we
20 part ways with employees.

21 THE WITNESS: I mean, Henry, you can tell
22 me if I can answer that or not.

23 MR. PERLOWSKI: If it's confidential
24 subject to an agreement, then it's confidential.

25 BY MS. GIBSON:

1 Q So is it confidential --

2 MR. PERLOWSKI: So if it was a separation
3 agreement between NAF and Mr. Frommert as
4 confidentiality as to what can be said, then that
5 agreement would apply.

6 A Yes.

7 BY MS. GIBSON:

8 Q Was he fired?

9 A We had an agreement with Scott that it
10 just wasn't a good fit for New American Funding and
11 we were going to part ways.

12 Q Okay. Was he fired?

13 A He was terminated, yes.

14 Q Was he paid money when he was terminated?

15 A Not that I recall.

16 Q Was he unhappy at NAF?

17 MR. PERLOWSKI: Object to the form.

18 You can answer.

19 A No, I don't think he was. I think he was
20 happy here.

21 BY MS. GIBSON:

22 Q Who is your CFO now?

23 A We don't have anybody that holds that
24 title. It reverted back really to Jason Obradovich
25 after Scott Frommert was no longer with the

1 company.

2 Q Okay. Have you spoken to Mr. Frommert
3 since being notified of this litigation?

4 A No.

5 Q And he prepared the P&L -- or, I'm sorry,
6 he prepared -- he did all the work that went into
7 preparing the March 1, 20 -- did he do all the work
8 that went into preparing the March 1, 2020
9 amendment?

10 A He didn't prepare the actual amendment
11 that was sent. That was prepared by human
12 resources. But he did all the work providing the
13 structure for the P&L.

14 Q Okay. And did -- were you involved in
15 drafting the separation agreement with
16 Mr. Frommert?

17 A I was involved in it, in the -- in the
18 separation, yeah.

19 Q Were you involved in writing the
20 separation agreement?

21 A I didn't write the separation agreement,
22 human resources did, and I would have to refresh my
23 memory as to what the terms of that were.

24 Q Have you read it?

25 A When -- when we parted ways, yes.

1 Q And you testified that was March or April
2 of 2020?

3 A Yeah.

4 Q Okay. And I think I just asked you, and
5 I don't remember your answer, have you spoken to
6 Mr. Frommert after being -- after you've learned of
7 this litigation?

8 A No, I have not spoken to Scott since we
9 parted ways.

10 Q Okay. Are you aware of a meeting that
11 Mr. Frommert and Mr. Reed attended with
12 Ms. Spearman, Ms. Allison and her CPA and a lawyer
13 named Lex Watson?

14 A I do recall that, yes.

15 Q Okay. Did Mr. Frommert communicate with
16 you about that meeting?

17 A He did.

18 Q What did he tell you about that meeting?

19 A He -- he told me that he thought it went
20 well and that he answered a lot of questions and he
21 thought that everybody was under a good
22 understanding of what the agreement was.

23 And he walked away from that thinking
24 that, you know, everybody was happy with where we
25 were going.

1 Q And Ms. Allison brought her CPA to that
2 meeting?

3 A I'm assuming it was hers. I -- I don't
4 know for sure. I didn't -- I didn't know the
5 person.

6 Q Okay. But you just -- did you just
7 testify that he walked away understanding that
8 everyone was happy?

9 A That was what the messaging back from
10 Scott was.

11 Q And did you at some point learn that
12 Ms. Spearman and Ms. Allison weren't happy?

13 A No, I think that there was some back and
14 forth after that about questions on the P&L and
15 things like that.

16 But that really was -- Scott was kind of
17 taking point with those -- with the questions and
18 the back and forth.

19 Q Is there any reason why NAF hasn't
20 identified Mr. Frommert as a witness who would know
21 information about Ms. Spearman's employment
22 agreement since he was -- conducted this meeting
23 with Kelly and Gina?

24 MR. PERLOWSKI: Object to the form.

25 A No.

1 BY MS. GIBSON:

2 Q Would he have the best knowledge of what
3 happened at that meeting?

4 A Yeah, I -- I mean, yes, he was there, so
5 yes.

6 Q Yeah. I understood he prepared a slide
7 show to present at that meeting. Did you receive a
8 copy of that slide show?

9 A I do not recall seeing any slide show.

10 Q Did he meet with you before he went to
11 meet with them in Atlanta to discuss what he was
12 going to present?

13 A We -- we -- Scott and I met all the time,
14 but he did -- he did talk to me about going to the
15 meeting and what he was going to talk to Kelly and
16 Gina about, but I don't remember reviewing material
17 or anything like that.

18 Q What did he tell you he was going to talk
19 to them about?

20 A We really -- I think really we were kind
21 of in the dark as to what -- what the questions
22 were going to be.

23 He -- he was feeling very confident about
24 the model that he had built and that he was going
25 to go and explain that model and make sure that

1 everybody had their questions answered.

2 And I know it was important for -- I'm
3 assuming it was Kelly's CPA, I don't think it was
4 Gina's. Or maybe they shared the same person, I
5 don't know. They had questions as well and Scott
6 felt like he could handle all of those questions.

7 Q Do you -- did you understand or do you
8 know what their -- what Kelly and Gina's concerns
9 were with respect to the P&L model and leaving
10 their compensation under their 2016 agreement?

11 A I think -- I think it would be the same
12 concerns that everybody had. It's a wholesale
13 change of the way that they were compensated. And
14 a P&L model is a very different model to manage.

15 I think Kelly had a lot of experience
16 managing a P&L, but there's a lot of skin in the
17 game when you move from a straight BPS model to a
18 P&L.

19 So they wanted to make sure that they had
20 a good firm understanding of the way we were
21 accounting for all the P and all the L, and make
22 sure that they could be profitable and make the
23 money that they wanted to make.

24 Q Did you review any materials that they
25 went over at that meeting?

1 A Not that I recall.

2 Q Does NAF have those materials that they
3 went over at that meeting?

4 A I did not --

5 MR. PERLOWSKI: Object to the form,
6 foundation.

7 THE WITNESS: Sorry.

8 BY MS. GIBSON:

9 Q You can answer.

10 A I did not -- I did not have any slide
11 show that has been noticed in this lawsuit. I know
12 it's come up. I -- I do not recall ever seeing any
13 sort of slide show.

14 Q Has anyone from NAF asked Mr. Frommert
15 for the slide show?

16 A Not that I know of.

17 Q Does NAF -- anyone at NAF know what the
18 contents of the slide show is?

19 MR. PERLOWSKI: Object to the form,
20 foundation.

21 BY MS. GIBSON:

22 Q You can answer.

23 A Yeah, like I said, I -- I never saw any
24 sort of slide show.

25 Q I understand.

1 I'm asking you, like, as the NAF 30(b)(6)
2 rep, if NAF has any knowledge of anyone at NAF that
3 knows what the contents of that slide show is?

4 A No.

5 MR. PERLOWSKI: Object to the form.

6 MS. GIBSON: Sorry. Go ahead, Henry.

7 MR. PERLOWSKI: I asserted my objection.

8 MS. GIBSON: What did he say?

9 MR. HARGROVE: He asserted his objection.

10 MR. PERLOWSKI: I said I asserted my
11 objection.

12 BY MS. GIBSON:

13 Q So no one at NAF --

14 MR. PERLOWSKI: One second. I'm also
15 going to assert an objection because I don't
16 believe that's a noticed 30(b)(6) topic that I can
17 see. I'm skimming through it, but...

18 I'm looking at the notice right now. I
19 don't believe there is a notice for anything about
20 a slide show.

21 MS. GIBSON: It's probably not that
22 specific, but it's about the March 1, 2020
23 amendment. And I believe the order said I could
24 ask about that.

25 But I'm asking -- I can ask in her

1 personal --

2 MR. PERLOWSKI: You certainly can, but I
3 know that you phrased a question of her in her
4 capacity as a 30(b)(6) witness.

5 MS. GIBSON: Absolutely.

6 MR. PERLOWSKI: I just wanted to raise a
7 point that that's not a designated -- that's not a
8 noticed topic, but you can certainly ask her
9 individually certainly, and please do.

10 MS. GIBSON: Okay, yeah. Thank you.

11 One of the notice topics, though, is
12 communications about Ms. Spearman's contracts, and
13 I'm trying to find it for you.

14 Here.

15 Financial decisions made by NAF regarding
16 changes to compensation. And documents and
17 materials relied upon by NAF in deciding whether to
18 alter her compensation. The nature and scope of
19 contractual negotiations for Ms. Spearman's
20 employment. The nature and scope of Ms. Spearman's
21 compensation.

22 BY MS. GIBSON:

23 Q So I just want to know if anyone at NAF
24 knows whether that slide show compared
25 Ms. Spearman's -- the buckets in Ms. Spearman's

1 2016 Schedule 1 to the amended Schedule 1 dated
2 March 1, 2020?

3 MR. PERLOWSKI: Object to the form,
4 foundation.

5 BY MS. GIBSON:

6 Q You can answer.

7 A Like I said, I have not seen any sort of
8 slide show. I don't know anything that was -- I
9 don't even know if it exists to be honest.

10 Q Well, if we have testimony from
11 individuals that said they were showed a slide
12 show, do you have any reason to disagree with them?

13 MR. PERLOWSKI: Object to the form,
14 foundation.

15 A Yeah, all I can -- all I can testify to
16 is, do I know of a slide show, I do not know of a
17 slide show.

18 BY MS. GIBSON:

19 Q And does NAF know of a slide show?

20 A No.

21 Q Okay. Has anyone spoken to Mr. Reed
22 since about -- since you received notice of the
23 litigation?

24 A Not that I know of.

25 Q Do you know if anyone at NAF has asked

1 Mr. Reed about the slide show?

2 A Not that I know of.

3 Q Did anyone ask Mr. Reed what was
4 discussed at the -- this meeting in the fall of
5 2019?

6 A Are you asking if we had conversations
7 about the meeting like after the meeting or since
8 we've been served the lawsuit?

9 Q Since you've been served the lawsuit?

10 A No.

11 Q So did you have conversations with
12 Mr. Reed after the meeting?

13 A Yes. So I got the same messaging from
14 Jon that I got from Scott, was that the meeting
15 went well. He walked away thinking that everybody
16 was -- understood the agreement. And I think there
17 were a few takeaways and nothing more than that.

18 MS. GIBSON: It's 1:45. So it's almost
19 11 your time. Do you want to take a 10-minute
20 break or do you want to break for 30 minutes for
21 lunch, Henry and Ms. Bunce?

22 THE WITNESS: It's really early for lunch
23 for me.

24 MS. GIBSON: No, that's fine.

25 MR. PERLOWSKI: Let's do a short break,

1 and then maybe we can do a 30-minute break, you
2 know, in another hour or so.

3 MS. GIBSON: Sure.

4 MR. PERLOWSKI: If that works for
5 everybody.

6 MS. GIBSON: That's fine. We'll speak
7 in -- we'll resume at 1:55.

8 MR. PERLOWSKI: Sounds good. Thank you.

9 (Recess taken 1:45 - 2:03 p.m. EST.)

10 MS. GIBSON: We can go back on the
11 record.

12 BY MS. GIBSON:

13 Q What was Jon Reed's title?

14 A I think it was EVP of retail sales.

15 Q Did Ms. Spearman and Ms. Allison report
16 to him?

17 A They did.

18 Q Okay. When was he hired?

19 A Oh, my gosh. Maybe in 2000 -- let me
20 think real quick -- 2012.

21 Q Is he still with the company?

22 A He is not.

23 Q When did he leave?

24 A 2020, early spring.

25 Q Was it before or after the March 1, 2020

1 amendment?

2 A I think it was right after that.

3 Q Was he required to sign the amendment or
4 was -- did the amendment apply to his compensation?

5 A No, he doesn't -- he didn't manage a
6 region or anything like that. He didn't have
7 production reporting up to him.

8 Q And you said he was EVP?

9 A EVP.

10 Q So in his role as EVP, does he review
11 P&Ls?

12 A He did.

13 Q Would he have reviewed the same P&Ls that
14 you looked at?

15 MR. PERLOWSKI: Object to the form.

16 A Specific to outside retail, yes.

17 BY MS. GIBSON:

18 Q There would be no reason that they would
19 be different, is there?

20 A What do you mean?

21 MR. PERLOWSKI: Object to the form.

22 Yeah, I --

23 BY MS. GIBSON:

24 Q Is there any reason why a P&L for
25 December -- I'm sorry, a P&L from January to -- to

1 November 2018 would be different from the P&L that
2 you looked at?

3 MR. PERLOWSKI: Object to the form.

4 BY MS. GIBSON:

5 Q You can answer.

6 A Yeah. So as the COO, I'm looking at
7 different P&Ls. I'm looking at an P&L for the
8 entire company, I'm looking at our internal call
9 center P&L, and then outside retail P&L. So Jon
10 was specific EVP to outside retail.

11 Q So you said the P&L that you looked at in
12 preparing for the deposition was the P&L for
13 outside retail; is that correct?

14 A That's correct.

15 Q Okay. And so that's the same P&Ls that
16 he would look at?

17 A Correct.

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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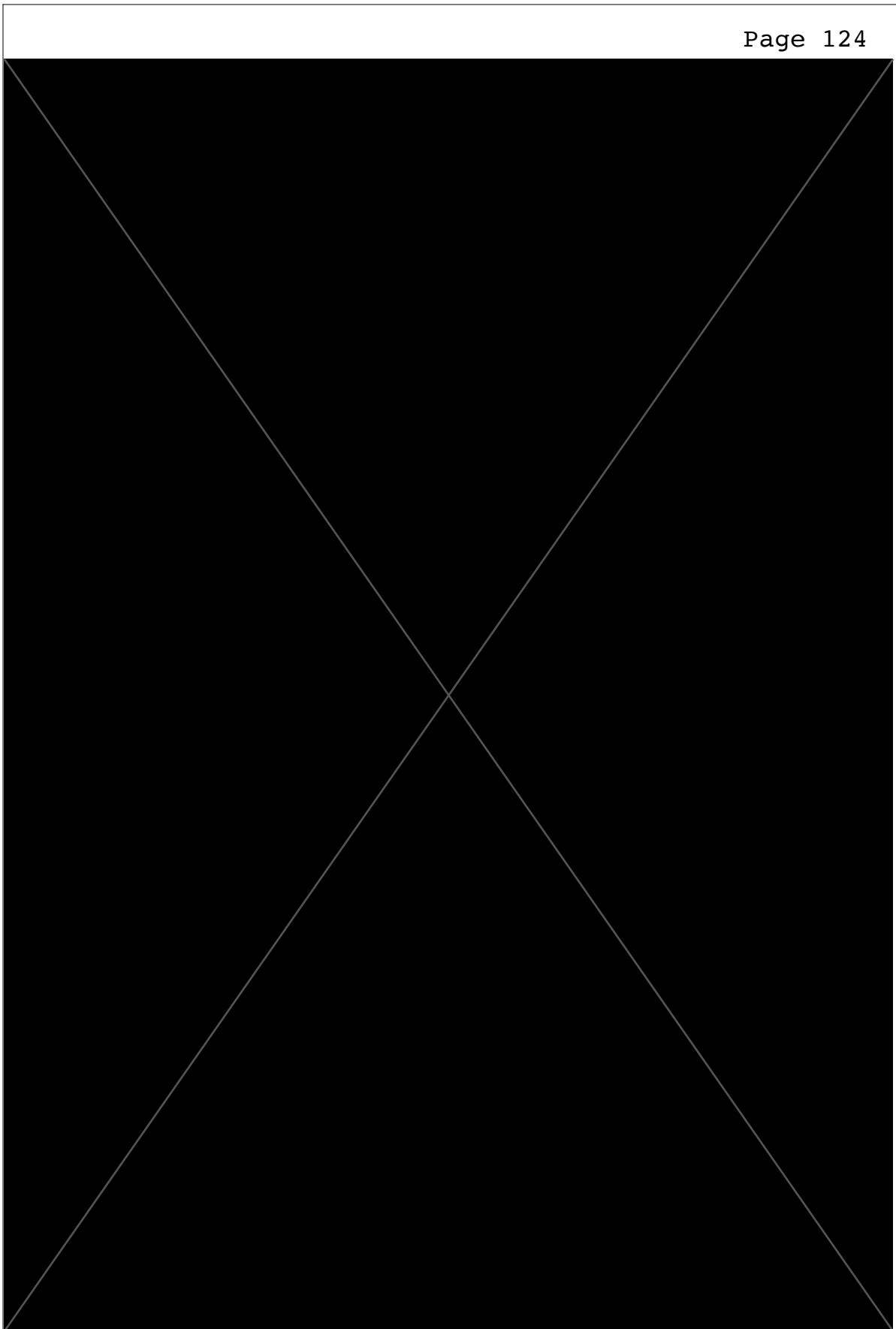
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5 [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 Q And he would be able to see CM3 fully
9 loaded?

10 A He would, yeah.

11 Q And is he -- would he be looking at the
12 P&L for the entire United States or is there a P&L
13 for just the Southeast region?

14 A So it would --

15 MR. PERLOWSKI: Object to the form.

16 Subject to that, you can answer.

17 THE WITNESS: Sorry, Henry.

18 A So, yeah, the P&L was -- would cover the
19 entire United States, but you could also see it by
20 region.

21 BY MS. GIBSON:

22 Q Okay. Did you look at a P&L for the
23 Southeast region for that time period of January
24 through November 2018?

25 A I did.

1 Q And was the Southeast region profitable?

2 A As far as I remember on CM1, they were
3 profitable. I don't recall what their profit level
4 was at CM3.

5 Q And what would you look at today to learn
6 what their -- Southeast's region profit was at CM3?

7 A We can pull those P&Ls back up.

8 (Deposition Exhibit 9, Exhibit 10 and
9 Exhibit 11 were marked.)

10 BY MS. GIBSON:

11 Q Okay. We loaded a couple of exhibits for
12 you to look at. It's 9, 10, and 11. And you can
13 pull up 9 first.

14 A Okay, Regional Manager Schedule 1 dated
15 March 1st, 2017.

16 MR. PERLOWSKI: Just one second,
17 Ms. Bunce. Mine's still reloading. You said
18 Exhibit 9 first?

19 MS. GIBSON: Yes.

20 MR. PERLOWSKI: Thank you.

21 MS. GIBSON: You're welcome.

22 MR. PERLOWSKI: Thank you. Okay.

23 MS. GIBSON: Uh-huh.

24 MR. PERLOWSKI: And just -- I'm sorry to
25 interrupt, but did we ever actually introduce or

1 talk about Exhibit 8?

2 MS. GIBSON: No, not yet.

3 MR. PERLOWSKI: Okay, thank you.

4 BY MS. GIBSON:

5 Q Ms. Bunce, are you taking a look at that?

6 A Yeah, I said I already had it up.

7 Q Okay. Just let me know when you had a
8 minute to review it.

9 A (Witness reviews document.)

10 Okay, I reviewed it.

11 Q Okay. And was this the same amend --
12 same Schedule 1 that was attached to Ms. Spearman's
13 November 2016 regional manager agreement?

14 A No, this one is dated March 1st, 2017.

15 Q All right. And you did say before, I
16 think your word was, form documents, but my
17 question is, is it the same -- I know it's got a
18 different date. Is it the same contents?

19 A I'd have to do a side by side. Like I
20 said, we have a boilerplate agreement, but we --

21 Q Boilerplate.

22 A -- do amend them if we need to.

23 So I'd have to do a side by side to say
24 they're exactly the same verbiage.

25 Q Okay. And prior I asked you if the

1 March 1, 2020 amendment was the first written
2 amendment to Ms. Spearman's compensation. Do you
3 remember that?

4 A I do.

5 Q And was that the first written amendment
6 amended -- amendment to her compensation?

7 A No. What I said was I thought that there
8 had been a previous amendment. So I'm assuming
9 this is it.

10 Q Well, I want to show you what was
11 introduced at Ms. Spearman's deposition by your
12 counsel, and this was presented to her and
13 represented to be a Schedule 1 dated March 1, 2017.
14 And if you go to the second page, and it's got the
15 Bates page on the right, NAF_275.

16 A Yes.

17 Q And it has the same provision as November
18 2016, Schedule 1, titled 1.4, Override Bonus
19 Calculation Table. Do you see that?

20 A I do.

21 Q And it states: Override Bonus payable to
22 Regional Manager shall be calculated per the
23 Override Bonus Calculation Table below. Loan
24 Volume and Units funded by managed territory
25 branches during a calendar month will receive the

1 BPS shown in the Override Bonus Calculation Table
2 unless specified otherwise as follows.

3 Do you see that?

4 A I do.

5 Q You do?

6 A Yeah.

7 Q And then if you go to the next page, do
8 those appear to be the same table as in her 2016
9 Schedule 1?

10 MR. PERLOWSKI: Could you please repeat
11 that question?

12 BY MS. GIBSON:

13 Q Sure.

14 If you go to the next page, Bates
15 No. 276, there is a table. Does that appear to be
16 the same table as in Ms. Spearman's 2016 Schedule
17 1?

18 A The form looks the same. I just -- I
19 don't -- I'd have to do a side by side on the
20 language and the tables to tell you for sure if it
21 was exactly the same. But the form looks the same.

22 Q Okay. Do you know if this document was
23 an amendment to Ms. Spearman's compensation?

24 MR. PERLOWSKI: Object to the form.

25 You can answer.

1 A It was. It is an amendment because we
2 wouldn't have produced -- we wouldn't have sent
3 anything to Gina unless there was an amendment to
4 the contract that she initially signed in 2016.

5 BY MS. GIBSON:

6 Q Was this sent to Ms. Spearman?

7 A I'm assuming it was since it was
8 addressed to her.

9 Q What do you mean it's addressed to her?

10 A Well, we wouldn't have -- we wouldn't
11 have produced a contract. This is in Gina's name
12 dated March 1st, 2017, unless we were amending
13 something. So if we were amending something, then
14 we would have presented it to her.

15 Q Well, do you agree with me that NAF --
16 would you agree with me that NAF prepared many
17 versions of the March 1, 2020 amendment?

18 A I don't know how many versions were
19 produced.

20 Q Do you have any evidence that this
21 Exhibit 9 was provided to Ms. Spearman?

22 A I don't see any Adobe Sign on the top
23 like the other one did have.

24 So let me look.

25 No, in what you produced here, I don't

1 see anything.

2 Q Okay. And if you go to Page Bates
3 No. 277.

4 A Yes.

5 Q Do you see that the bucket, 1.4.B, where
6 it has "yes" and "no," and then in the 2016
7 agreement, it was marked "no," and you see here it
8 was marked "yes"?

9 A I do see that.

10 Q Okay. And in 2016, original agreement,
11 all of these buckets were marked "no," correct,
12 when we were reviewed them earlier?

13 MR. PERLOWSKI: Object to the form.

14 You can answer.

15 A Yes. So as I discussed before, the box
16 that's marked "yes" or "no" applies to that
17 override bonus which I had talked to you about was
18 a big bone of contention with Kelly and Gina.

19 BY MS. GIBSON:

20 Q Right. You testified after your break
21 that the "no" applied to the loan applications
22 taken during the monetary guaranty period. And
23 before the break you testified it applied to all
24 bullets.

25 But my question was, in the original 2016

1 agreement, all of these lines with the "yes" and
2 "no" were marked "no," under 1.4.B and we see D and
3 E, correct?

4 MR. PERLOWSKI: Object to the form.

5 A Yeah. I want to make sure that we're
6 clear on this because when I clarified, that box
7 "yes" or "no" is specific to the loan application.
8 So I feel like you're trying to lead me down that
9 path, so --

10 BY MS. GIBSON:

11 Q No, I don't want to misinterpret that.

12 So you are -- are you telling me now that
13 the yes -- that that "no" when it was checked not
14 applicable to this area manager schedule only
15 applied to the bullet point immediately preceding
16 it?

17 A That's correct.

18 Q So you've changed your testimony; is that
19 correct?

20 MR. PERLOWSKI: Object to the form.

21 A So --

22 BY MS. GIBSON:

23 Q You can answer.

24 A -- we've already gone through this. So I
25 told you that the -- we know that the brokered,

1 down payment assistance, nobody was getting paid
2 overrides on those.

3 So when you had initially questioned me
4 and then I had a break to actually look at it
5 because it wasn't ringing right with me, then
6 that's when I realized that those boxes are
7 specific for the override bonus because it was a
8 big bone of contention with Kelly and Gina because
9 they were bringing over, I think it was, upwards of
10 30 originators that were all on an extended
11 guaranty that they wouldn't be receiving overrides
12 on.

13 Q So that would --

14 A So we changed --

15 Q So, go ahead.

16 A So we checked that box "no" that it would
17 not apply so that they would receive their
18 overrides.

19 This agreement, the box is checked "yes,"
20 which is standard for New American, that if you do
21 hire a loan officer over \$5,000 guaranty a month,
22 then you don't earn override while they're still on
23 that guaranty period.

24 They had gotten past that initial big
25 glut of loan officers coming on and they had

1 started doing fresh recruiting with high producing
2 LOs that were earning high guaranties, so we went
3 back to what our standard is. And that's what this
4 is.

5 Q Okay. So that meant that they would be
6 receiving lower compensation because they wouldn't
7 be receiving an override on the new loan officers
8 that came in, correct?

9 A Yes, correct, only for -- and there's
10 language in here that spells it out, but it's only
11 for originators that were earning over a \$5,000
12 guaranty and didn't outearn their guaranty in the
13 month that the bonus override was paid.

14 It's a complicated process but...

15 Q All right. So before the break when I --
16 when we together read through the contract and I
17 said regional manager, personal loan production,
18 brokered loans, down payment assisted loans, those
19 -- at that time it didn't ring a bell or sound
20 unusual to you that that was marked "no, not
21 applicable"?

22 A Yes, so what I --

23 MR. PERLOWSKI: Hold on. Hold on.

24 Objection, mischaracterizes testimony, form.

25 You can answer.

1 A Yes, so what I -- what I said was I
2 should have taken a minute -- because it wasn't
3 ringing right with me -- I should have taken a
4 minute and gathered myself and reread the contract.

5 Because once I was given a break and
6 reread it, then I recalled why exactly we had
7 marked that box "no" and what it applied to.

8 BY MS. GIBSON:

9 Q Okay. And at any time if you need a
10 minute to read it more in depth, absolutely let me
11 know.

12 A I will.

13 Q I thought we had done that.

14 So if you go to the last page, Page 279.
15 You see that?

16 A I do.

17 Q And whose signature is that?

18 Jan Preslo; is that correct?

19 A That is correct.

20 Q Okay. Did the letter offer require that
21 written agreements -- that material terms,
22 compensation billing be changed by a written
23 agreement signed by HR, you or Rick?

24 MR. PERLOWSKI: Object to the form.

25 A I'm sorry, where are you reading that on

1 this agreement?

2 BY MS. GIBSON:

3 Q Okay. If you want to go back to Exhibit
4 2, the letter offer we -- you testified earlier
5 about.

6 A Yeah, can you restate your question?

7 Q Sure.

8 So earlier I asked you have we discussed
9 the letter offer, and we read through the paragraph
10 that stated: The material terms of your employment
11 as set out in this letter may not be modified or
12 amended by verbal agreement or course of conduct,
13 but only by a written agreement presented by HR,
14 the COO or the CEO.

15 A Oh, yeah, yep. Yep.

16 Q So this agreement -- this proposed
17 amendment is signed by Ms. Preslo, correct?

18 A That's correct.

19 Q So she's not the CEO or the COO, correct?

20 A Correct, she's EVP of production for
21 outside retail.

22 Q And is she authorized under the letter
23 agree- -- under the letter offer to sign -- to make
24 a change to Ms. Spearman's employment compensation?

25 MR. PERLOWSKI: Object to the form.

1 You can answer.

2 A Yeah. No, she's not -- well, yeah, she's
3 not authorized according to the contract.

4 BY MS. GIBSON:

5 Q And just so I'm clear, there's no Adobe
6 Sign that's on this document that you're looking at
7 that shows Ms. Spearman received it?

8 A I do not see that.

9 Q Okay. Can you open -- refresh your
10 screen and open Exhibit 10.

11 A I've got Exhibit 10 up.

12 Q Okay. And this is another Amendment to
13 Schedule 1, Regional Manager Compensation dated
14 January 1, 2018.

15 And it was previously introduced by your
16 counsel at Ms. Spearman's deposition as Defendant's
17 Exhibit 8, so you'll see that at the bottom. And
18 it's Bate No. 256.

19 Do you see that?

20 A I do see that.

21 Q And go ahead and, you know, take as much
22 time as you need to look at these pages.

23 A (Witness reviews document.)

24 Okay, I've read it. I've read some of
25 it. Most of it.

1 Q Okay. Was 2017 profitable for outside
2 retail?

3 A As far as I recall, yes.

4 Q Was it crazy profitable or was it just,
5 eh?

6 MR. PERLOWSKI: Object to the form.

7 A I don't -- I don't remember. I don't
8 think it was crazy profitable, no, to use your
9 term.

10 BY MS. GIBSON:

11 Q So if this agreement -- this Exhibit 10,
12 do you know if it was ever given to Ms. Spearman?

13 A I don't know if it was or not. I would
14 assume if it was drawn up that it was given to her.

15 Q Is there any DocuSign or any evidence
16 that this was presented to Ms. Spearman?

17 A Well, if this --

18 Q I'm sorry, go ahead.

19 A If this is maybe part of a whole
20 contract, I don't know. So this is just the
21 amendment to Schedule 1. There's nobody's name on
22 this contract.

23 Q Right.

24 So I'll represent this was produced by
25 NAF in litigation as pertaining to Ms. Spearman, so

1 that's why I'm asking you.

2 Is there a contract that this would have
3 gone with?

4 A I would assume so. I mean, I know it
5 pertains to the Southeast region because of all the
6 branch lists in Exhibit A. Those are Kelly and
7 Gina's branches.

8 But without seeing the full context of
9 what was sent out, I can't -- I can't for surely
10 answer your question.

11 Q How would we know what was sent out? How
12 would we find out what was sent to Ms. Spearman?

13 A We would have to go through the emails or
14 Adobe Sign or however it was sent. I'd have --
15 we'd have to review that with human resources.

16 Q Okay. Is there any reason why that would
17 not have been produced by NAF to date?

18 MR. PERLOWSKI: It was. You're just not
19 showing it to her.

20 MS. GIBSON: I don't have any Adobe
21 DocuSign.

22 MR. PERLOWSKI: You have an email that
23 shows the distribution of this document, you're
24 just not showing it to her.

25 MS. GIBSON: I'm asking for the Adobe

1 records that show, Henry.

2 BY MS. GIBSON:

3 Q And back to this -- this document, this
4 is not in any way similar to the format of the
5 Schedule 1 in Exhibit 9 or attached to
6 Ms. Spearman's 2016 contract, is it?

7 A No, this looks like a different schedule.

8 Q Okay. Does this schedule purport to
9 change her compensation?

10 A It does.

11 Q Can I get you to look at -- and you had
12 already testified it's not signed by anyone and it
13 doesn't have anyone's name on it, correct?

14 A Correct.

15 Q Can you open Exhibit 11.

16 A Okay.

17 Q And go ahead and take a few minutes and
18 look at this.

19 You know, I'll go ahead and ask: Does
20 this appear to look like the Exhibit 9 and the
21 Schedule 1 attached to Ms. Spearman's 2016 regional
22 manager agreement?

23 A The schedule looks a little different,
24 but the form looks to be the same.

25 Q How does the -- is it different in that

1 the boxes under 1.4.B are checked -- is checked
2 "yes" and 1.4.D is checked "yes"?

3 A No, no, I was talking about the
4 override bonus --

5 MR. PERLOWSKI: Object to the form.

6 Go ahead.

7 THE WITNESS: Sorry.

8 A I was --

9 BY MS. GIBSON:

10 Q I'm sorry. Okay. This is different how?

11 THE WITNESS: Oh, my god.

12 MR. PERLOWSKI: So you're break -- so
13 you're breaking up a little bit.

14 MS. GIBSON: How come you're freezing?

15 A Am I freezing or are you?

16 BY MS. GIBSON:

17 Q Yes, you are.

18 Ms. Bunce, how did you say it's
19 different?

20 A So I'm looking at the Bonus Override
21 Calculation Table and that looks different from the
22 other ones that I've reviewed. It looks like
23 there's an additional box.

24 Q And if you go to the last page, Bates
25 No. 285.

1 A Yep, I'm there.

2 Q There's a signature line for you, but you
3 haven't signed it, have you?

4 A No.

5 Q Has anyone signed it?

6 A No.

7 Q Is there any DocuSign evidence that this
8 was given to Ms. Spearman?

9 A Not that I can see.

10 Q And can you load -- so we were just
11 talking about purported amendments that NAF has in
12 its files dated March 1, '18, March 1 of 2017 and
13 January 2018. So these are all 2017 to March 2018,
14 would you agree?

15 A Yes.

16 MR. PERLOWSKI: Hold on. Just give me a
17 second. My Exhibit Share just froze.

18 MS. GIBSON: Sure. I wasn't looking at
19 an exhibit.

20 MR. PERLOWSKI: I thought you had asked
21 her to reload, but maybe I'm...

22 (Deposition Exhibit 12 marked.)

23 MS. GIBSON: Can you reload now and look
24 at Exhibit 12. It is Bates number SPEARMAN643.
25 And I apologize, you're going to have to rotate it.

1 MR. PERLOWSKI: Give me one second,
2 please.

3 MS. GIBSON: Sure.

4 MR. PERLOWSKI: Thank you. Okay, I got
5 it. Thank you.

6 BY MS. GIBSON:

7 Q Ms. Bunce, do you have it?

8 A Yeah, let me rotate it real quick. Okay.

9 Q Just let me know when you're ready.

10 A (Witness reviews document.)

11 Okay, I've read it.

12 Q Okay. And so just -- these amendments --
13 these proposed amendments that we just went over,
14 Exhibits 9, 10, 11 were dated from March 2017 to
15 March 2018, correct?

16 A Correct.

17 Q Okay. And Exhibit 12 is an email from
18 you, Christy Bunce, dated August 24th, 2018, to
19 Ms. Spearman and Ms. Allison, Subject You. Do you
20 see that?

21 A I do.

22 Q And your email says: Hi Kelly and Gina,
23 I just wanted to put in writing how much we value
24 our partnership with you guys and that we have
25 never discussed your deal changing. Patty, Rick

1 and I think you two are one of the best things that
2 has ever happened to NAF and you have pushed us to
3 be better in every way. I absolutely love working
4 with you and you will forever be Our girls.

5 Do you see that?

6 A I do.

7 Q And you specifically say "we have never
8 discussed your deal changing."

9 So up until August 24th, 2018, NAF had
10 never changed the compensation identified in
11 Ms. Spearman's 2016 contract; is that true?

12 MR. PERLOWSKI: Object to the form.

13 BY MS. GIBSON:

14 Q You may answer.

15 A Yeah, I think you're taking that email
16 definitely out of context. So I'm assuming that
17 there was some back and forth about a deal changing
18 with them after amendments and things like that
19 somewhere around August, and that's why I sent that
20 email.

21 Q So tell me how this is out of context if
22 there is unsigned amendments that we just looked at
23 and shortly thereafter you're saying we never
24 talked about your deal changing?

25 A I can't -- I can't -- ...

1 MR. PERLOWSKI: Hold on --

2 A ... -- that we were having previous to
3 this email. So I'm sure that if you look in
4 emails, Kelly and Gina did receive those contract
5 changes.

6 They weren't just produced and then just
7 put into a file. That they were -- that they were
8 presented to them. Whether they signed them or not
9 is beside the point.

10 BY MS. GIBSON:

11 Q Are you texting or chatting with anyone
12 during the deposition?

13 A No.

14 Q Okay. But you testified earlier there's
15 no DocuSign evidence that these were ever presented
16 to Ms. Spearman, correct?

17 A Yeah, like I --

18 MR. PERLOWSKI: Object. Hold on. Object
19 to the form, mischaracterizes testimony.

20 BY MS. GIBSON:

21 Q Go ahead. You can answer.

22 A No, what I said in the beginning was, at
23 that time we were doing Adobe Sign and we were
24 doing other -- I think we were doing other DocuSign
25 and we were doing emails.

1 So I can't -- unless I can go through all
2 of the emails and say whether this is emailed to
3 them, whether it was sent through Adobe, I don't
4 know.

5 But it is obvious on these that you have
6 presented to me that they weren't time stamped as
7 -- as an e-sign.

8 Q Well, you're the 30(b)(6) witness on
9 behalf of NAF that I'm asking you what your
10 procedures are with respect to presenting
11 amendments to contracts to employees.

12 So I'm asking you to tell me what -- you
13 know, what evidence is there?

14 A And I stated --

15 MR. PERLOWSKI: Hold on a second. Object
16 to the form. Her testimony -- you said she is
17 NAF's representative about NAF's practices --

18 MS. GIBSON: You can object to form.

19 MR. PERLOWSKI: -- with respect to
20 changing compensation.

21 MS. GIBSON: No speaking objections.

22 MR. PERLOWSKI: And then you --

23 BY MS. GIBSON:

24 Q Go ahead, Ms. Bunce.

25 MR. PERLOWSKI: Object to the form.

1 Fundamentally misleading the witness.

2 BY MS. GIBSON:

3 Q So tell me what you are referencing in
4 this email because I don't have anything preceding
5 this other than these agreements.

6 A Yes. So this email is from August 2018.
7 So I don't recall what conversations I was having
8 with Kelly and Gina at that time, but I would
9 assume because of the email content that they were
10 asking me if we were having changes, that I knew of
11 looming changes to their contracts that were coming
12 forward. And my statement is true at that time.

13 Q So your statement that we have never
14 discussed your deal changing as of August 24th,
15 2018, is true?

16 A Yeah, for that period in time.

17 Q What period in time?

18 A August 24th, 2018. Obviously, there was
19 conversations between Kelly and Gina and I that I
20 do not recall that they were asking me about a
21 pending change. That's the way I read my response
22 back to them. And I --

23 Q So you don't recall -- I'm sorry, go
24 ahead.

25 A No, that's fine.

1 Q You don't recall any communications with
2 them where they were dissatisfied with the fact
3 they weren't being paid overrides pursuant to
4 Schedule 1 in their 2016 agreements?

5 MR. PERLOWSKI: Object to the form,
6 mischaracterizes testimony.

7 BY MS. GIBSON:

8 Q I'm asking, do you recall?

9 A No.

10 MR. PERLOWSKI: Objection, asked and
11 answered.

12 BY MS. GIBSON:

13 Q No, you don't, okay.

14 What did you mean that they would
15 "forever be our girls"?

16 A They were our girls. Gina knows this
17 very well. We were very proud to have Kelly and
18 Gina at New American Funding.

19 I told them numerous times that I was
20 very excited that we had people of their level that
21 were women leaders in mortgage, so.

22 And I think that was a big reason why
23 Kelly and Gina chose New American is because New
24 American is run a lot at the top by women. And we
25 had that in common.

1 So we started early on calling them our
2 girls. That's the way we called them. We didn't
3 have teams of salespeople in those positions.
4 Kelly and Gina were the only ones. And that's why
5 we said -- that's why we called them what we did.

6 And Gina knows for sure, without a shadow
7 of a doubt, that we were very proud to have her and
8 Kelly as part of New American Funding.

9 Q Did anyone at New American Funding ever
10 say that our girls made too much money?

11 A Not that I recall.

12 Q Did NAF believe that they made too much
13 money based on their 2016 agreements and the
14 compensation they received under those agreements?

15 A We felt that they were fairly paid until
16 the compensation agreement that they had didn't --
17 didn't work because New American as a whole as
18 outside retail was not making money on outside
19 retail. So it just wasn't a sustainable model.

20 Q And so is that what led to the change to
21 the P&L model embodied in the March 1, 2020
22 amendment?

23 A Yes.

24 MS. GIBSON: I think I'm at a good
25 stopping point for lunch. We can go off the

1 record.

2 MR. PERLOWSKI: What time would you like
3 to come back?

4 MS. GIBSON: 3:15 -- how about 3:20?

5 MR. PERLOWSKI: Sounds good. See you
6 then.

7 MS. GIBSON: Let's say 3:30 just to
8 be safe.

9 MR. PERLOWSKI: Okay, sounds good. See
10 you then.

11 (Lunch recess 2:44 - 3:34 p.m. EST)

12

13 * * * * *

14

15 MS. GIBSON: We can go back on the
16 record.

17 BY MS. GIBSON:

18 Q Ms. Bunce, I want to ask you about the
19 February 2019 leadership meeting. Do you recall
20 that taking place?

21 A I do.

22 Q Okay. Did you attend that meeting?

23 A I did.

24 Q And who else attended that meeting?

25 A It was all the SVPs, Jim Muth, Jan

1 Preslo, Jon Reed. I'm pretty sure Jason Obradovich
2 was in there. And Patty and Rick Arvielo attended
3 some of it. I don't think they were in all the
4 meeting.

5 Q Can you tell me about the format of the
6 meeting?

7 A It was informal. It was -- everybody
8 came into the Tustin office in corporate to discuss
9 going into 2019 what the override comp model was
10 going to be moving to a P&L, and then the
11 profitability of the OLA region as a whole.

12 Q What was discussed about the
13 profitability of the region as a whole?

14 MR. PERLOWSKI: Object to the form.
15 You can answer.

16 A Okay. The discussion was about the fact
17 that we did not make a profit for outside retail in
18 2018.

19 BY MS. GIBSON:

20 Q What specifically was discussed? And let
21 me go back -- strike that. Let me go back.

22 So how many days did this -- did the
23 meeting take place over?

24 A Two days.

25 Q Two days. And this was in February of

1 2019?

2 A Correct.

3 Q Okay. And was everyone present at one
4 time during the meeting?

5 A Yes.

6 Q Okay. Were -- did anyone make a
7 presentation?

8 A Actually, you know what, I think Chris
9 Garza who is our SVP over Nevada, northern
10 California and Arizona, I think he was on the
11 phone. I think he didn't attend for some reason.
12 I don't know if that's important but...

13 Q No, thank you.

14 So was -- did any of the officers speak
15 to the group as a whole?

16 A I'm sorry, what was that?

17 Q Did any of the officers of NAF speak to
18 the group as a whole?

19 A Yes.

20 Q Okay. Who spoke?

21 A We all did.

22 Q When you say "we," who is that? You?

23 A Yes, me, Rick, Patty, Jason, Jan, Jon.
24 And then it was a -- it was free form meeting, so
25 the SVPS were talking as well.

1 Q Okay. And what was your presentation
2 about?

3 A It was -- like I said, it was definitely
4 casual. It wasn't structured. So it was just we
5 were all having an open discussion about 2018, what
6 had occurred, the fact that the straight BPS
7 override model wasn't working going into 2019 and
8 we needed to come together as a group and figure
9 out, you know, what had made sense.

10 And we had already had conversations with
11 some of the SVPs. We had phone calls. We had
12 decided that we should all get together as a group
13 because it's a lot easier to communicate when
14 you're all in one room.

15 Because quite a few of the SVPs had
16 already weighed in earlier in 2018 that they wanted
17 to go to a P&L model.

18 So this was really to discuss, you know,
19 moving to that model, what it would take as an
20 organization to move to that model. Hiring a CFO
21 was one of those things that we would have to do to
22 move to that model.

23 So it was just a free form conversation
24 about doing all of those things. Talking about the
25 expenses that we were looking at that we had

1 incurred in 2018. And how we had evaluated those
2 expenses and allocated them through the sales
3 regions.

4 Q Was the meeting held at the headquarters
5 in Tustin?

6 A Yes.

7 Q Is the headquarters still in Tustin?

8 A It is.

9 Q What did Rick Arvielo talk about to the
10 group?

11 A I can't -- I can't recall specifics. We
12 were all kind of talking about the same thing. So
13 the same subjects.

14 Just the overall profitability of the --
15 of the regions, what we needed to do going into
16 2019 to make sure that the company was profitable,
17 that the SVPs were profitable in their regions,
18 that they were making an acceptable amount of
19 income, that our salespeople were able to get the
20 pricing that they needed to be successful.

21 So it was just a -- it was a conversation
22 around all of that and equal parts from everybody
23 that was discussing.

24 Q Did the officers, Rick, Patty, you, tell
25 the SVPs -- or strike that.

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 BY MS. GIBSON:

12 Q What was the tenor of the meeting?

13 A I would say it was a little contentious
14 for sure. Everybody was nervous about what was
15 going to happen and what we were going to decide.

16 And I think the SVP group -- and when I
17 say SVP group, please know that I'm lumping Gina
18 into that group.

19 The SVP group, they -- I had heard that
20 they were having side conversations because a few
21 weren't real excited by going on a P&L model and
22 most were.

23 So most -- you know, most of these people
24 are, you know, kind of mini business owners and
25 they really felt like if they could control their P

1 and their L and kind of be the masters of their
2 domain, that they could actually make more money
3 than what they had been making.

4 Q Did Rick or Patty Arvielo announce any
5 changes to the SVP's compensation at this meeting?

6 A I think most of the conversation -- I
7 mean, I talk the most at these meetings, so I think
8 most of it was presented by me.

9 So we were talking about marketing
10 budgets and pricing authority and things like that.

11 Jason Obradovich was there. He was
12 talking because everything pricing bubbles up to
13 him. He was talking about those things.

14 Jon Reed really was kind of the person
15 that was the go-to for profit and loss. So he was
16 talking a lot about just the expense of OLA.

17 So like I said, it was -- it was a -- it
18 was a group discussion.

19 Q Did you say Jon Reed was the person you'd
20 go to for P&Ls?

21 A Yeah, so he was -- he was kind of the
22 person that the SVPs would talk to the most about
23 the P&Ls. So he was -- he was -- had a lot to say
24 about that as well, discussing new structure and
25 things like that.

1 Q Was he in favor of the P&L model, moving
2 to compensation on a P&L model?

3 A I think so.

4 Q And then did you -- and I may have
5 misunderstood you, so -- you know, tell me if I'm
6 wrong.

7 Did you say Mr. Obradovich spoke about
8 pricing exceptions or he was the person to go to
9 for pricing exceptions?

10 A Yeah, so Jason heads up all of capital
11 markets. So he was discussing just, you know,
12 where he thought we needed to go as far as loan
13 officer flexibility with pricing and rate sheets
14 per region and things like that.

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 A Yeah, so the discussion more was -- and I
24 had talked about it before -- kind of that CM, CM1,
25 CM2, CM3, I guess you would call tiers on the

1 profitability.

2 So what the SVPs saw was CM1. So we
3 didn't -- it wasn't -- I mean, to make it simple,
4 it wasn't a fully loaded P&L.

5 So there's -- there's hedge cost, there's
6 servicing revenue and losses and all those types of
7 things that we weren't putting into the P&L that
8 the SVPs were looking at. All of those numbers
9 were in the P&L that we were viewing.

10 So it was just a decision on the business
11 side when we were developing this profit and loss
12 for the outside retail people that we weren't going
13 to hit them with some of those costs, corporate
14 allocations.

15 You know, we were a growing company, we
16 -- we probably had a little bit of an immature kind
17 of look at corporate allocations and the way we
18 allocated them to the outside retail division,
19 compared to the internal call center division,
20 compared to what we were just basically eating as a
21 corporation.

22 So once 2018 kind of rounded out and we
23 sat down and looked at the economics and where we
24 were with margins and just the state of the
25 mortgage industry, you know, we really had to come

1 together and talk about the fact that it -- it
2 needed to be a wholly loaded P&L.

3 So all costs had to be allocated to one
4 department or another.

5 Q Was Jason Obradovich responsible for
6 inputting the numbers that went into make --
7 creating the P&Ls?

8 A His department was the team that would
9 produce the P&Ls.

10 [REDACTED]
11 [REDACTED]
12 [REDACTED] [REDACTED]
13 [REDACTED] [REDACTED]
14 [REDACTED] [REDACTED]
15 [REDACTED] [REDACTED]
16 [REDACTED] [REDACTED]
17 [REDACTED] [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED] [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 Henry?

2 MR. PERLOWSKI: No. I think we have a
3 double negative issue there, but it's your
4 deposition.

5 MS. GIBSON: Thank you.

6 BY MS. GIBSON:

7 Q You can answer.

8 A Oh, I did. I said no.

9 Q So you never heard anyone make an
10 announcement about a misallocation or a shortfall
11 in the amount of \$30 million?

12 A I did not.

13 Q Or in the amount of any amount of money?

14 A No, there's no terminology that we use of
15 a shortfall or a misallocation.

16 Q Okay. So if other employees or SVPs who
17 were present at that February 2019 leadership
18 meeting testify -- have said they heard an
19 announcement -- they were present when it was
20 announced a \$30 million misallocation, would that
21 be inaccurate?

22 A That would be inaccurate.

23 MR. PERLOWSKI: Objection. Objection,
24 foundation.

25 Go ahead.

1 BY MS. GIBSON:

2 Q Were you present at the entire meeting?

3 A I was.

4 Q Okay. So you would have heard everyone's
5 presentation including Mr. and Mrs. Arvielo?

6 A Correct.

7 Q Okay. And was it ever announced at this
8 meeting or discussed at the -- and maybe announced
9 isn't the right meaning since you said it was more
10 of a give and take.

11 Was it ever discussed that the SVPs would
12 have to start paying their marketing costs?

13 A That was discussed.

14 Q Tell me what was discussed.

15 A Exactly that. So we were discussing the
16 fact that the -- the SVPs were making a lion's
17 share of the profit, and that we would be moving to
18 a P&L model, but that would take time.

19 So in the meantime they would take on the
20 marketing expenses in their regions since they were
21 the ones that were deciding whether to spend those
22 dollars or not.

23 Q Okay. And what -- were there any changes
24 announced or discussed at this meeting regarding
25 pricing exception tolerances?

1 A Yes.

2 Q And what were those?

3 A I think they were different for each
4 region, but I think it was just a matter of Jason
5 discussing with the SVPs pricing tolerance
6 guidelines and when the managers would be leaning
7 in for pricing exceptions and things like that.

8 But I do think it was specific to each
9 region.

10 Q And who was leading the discussion on the
11 change to compensation with respect to the
12 marketing costs?

13 MR. PERLOWSKI: Object to the form.

14 A Can I answer?

15 BY MS. GIBSON:

16 Q I'm just asking --

17 MR. PERLOWSKI: Yes.

18 BY MS. GIBSON:

19 Q -- who had the discussion?

20 A I think -- I think it was a roundtable
21 discussion. So I think we were all discussing it.
22 But most likely it was me that started the
23 conversation. I know Jon and Jan had input as well
24 into that conversation.

25 Q And did you -- did the discussion include

1 an announcement that the changes to PEs and
2 marketing costs would be for a short period of
3 time?

4 A Yes, that is correct. So the -- the
5 overall messaging was, listen, we need to make some
6 changes right away out of the gate. We understand
7 most everybody wants to go on a P&L model.

8 We want to do that as well. It makes
9 more -- most sense for the company as a whole and
10 for these SVPs running their regions, but we can't
11 do that overnight. And we knew it was a big job.

12 So we were making these changes in the
13 interim, and then quickly hiring a CFO, and then
14 developing a good P&L model that everybody, you
15 know, could abide by.

16 Q So when did NAF change its policy back on
17 the marketing costs and policy exceptions?

18 MR. PERLOWSKI: Objection, foundation.

19 Go ahead.

20 A So as far as I recall, we didn't change
21 it back. So once the P&L model was rolled out,
22 then we had a new policy as far as P&L expenses and
23 where they were hitting the P&L and those kind of
24 things. So it was never changed back to the way it
25 was before.

1 BY MS. GIBSON:

2 Q So the -- but the P&L model that was
3 amended -- that you -- that you changed the
4 compensation to the P&L model March 1, 2020; is
5 that correct?

6 A Yes. That's when it took effect, yes.

7 Q Okay. So the discussion at the
8 leadership meeting was that this would -- the
9 change to marketing costs and PEs would be for a
10 short period of time.

11 Was that -- what was contemplated by that
12 short period of time? What amount of time?

13 A I don't think there was any -- I know for
14 sure there was no end date to that. It was -- it
15 was like this -- the progression of what needed to
16 happen. We were making the changes we needed to
17 make that we thought were fair for the company and
18 for the regions.

19 And then we promised everybody that we
20 would actively put all of our efforts into finding
21 a CFO to build the P&Ls, to put everybody on a P&L.

22 So we couldn't give a time frame. So it
23 was just, you know, our commitment to everybody
24 that we would put all of our efforts into that,
25 which is exactly what we did.

1 Q Did Patty Arvielo tell the SVPs that it
2 would only be for a 90-day period of time?

3 A Not that I recall. I think what we did
4 talk about was that our hopes would be that we can
5 find a CFO within 90 days of the meetings we had in
6 February. We felt like we could accomplish that.

7 (Deposition Exhibit 13 marked.)

8 BY MS. GIBSON:

9 Q Okay. And if you can look at the next
10 exhibit that was uploaded. 13.

11 A I've got it open in front of me.

12 Q Okay.

13 MR. PERLOWSKI: One second. One second,
14 please. I'm sorry, it took me a second to be able
15 to reload. One second.

16 Okay, thank you.

17 MS. GIBSON: Sure.

18 BY MS. GIBSON:

19 Q If you go to Page 5. And actually, the
20 bottom of Page 4, it asks: Admit that at the
21 February 2019 Leadership Meeting, NAF verbally
22 informed Ms. Allison that she no longer had a
23 marketing budget and all Marketing Expenses would
24 be deducted from her compensation.

25 NAF's response is: Denied as stated.

1 NAF admits that, on February 12 it notified
2 Ms. Spearman and Ms. Allison that it would
3 eliminate their marketing budget prospectively for
4 a period of time to ensure profitability.

5 Do you see that?

6 A I do.

7 Q Is February 12, 2019 the date of that
8 leadership meeting?

9 A As far as I recall, yes.

10 Q And what is the period of time that NAF
11 contemplated to ensure that the marketing budget
12 would be eliminated prospectively?

13 A I -- I just answered that. So the -- we
14 did not put a date on when that marketing budget
15 would change.

16 Q I'm not asking for a date, I'm just
17 asking if you expressed when you told them all
18 their marketing budget is being taken away, and you
19 said it's for a period of time, did anyone ask what
20 that period of time is?

21 A No. I mean, the conversation flowed into
22 exactly what I just said. So I said this is what
23 the changes we're going to make now. We're going
24 -- the order of things that have to happen is we
25 absolutely have to hire a CFO.

1 We're going to find somebody that has P&L
2 experience so that -- we're hoping that we can
3 build those P&Ls and get them presented to the SVPs
4 as quickly as possible.

5 So there was no -- that was kind of it.
6 I mean, we left those meetings knowing that Patty
7 and Rick and I and Jason were going to find a CFO
8 in very short order and that we were going to set
9 this, you know, whole P&L plan in place.

10 But there was no way for me or anybody
11 else to say I know for sure we're going to have a
12 P&L model by this date because we just -- I
13 personally had never done that.

14 And we didn't have anybody at New
15 American that had built P&L models before. We had
16 never worked under those models.

17 Q I'm not asking when NAF told the SVPs the
18 P&L model would be in place. I'm asking what was
19 told to Ms. Spearman, Ms. Allison, the other SVPs,
20 about the period of time that the marketing budget
21 was removed?

22 A Yeah, I think that's maybe where we're
23 not seeing eye to eye. So there was -- the
24 marketing budgets weren't coming back.

25 So the whole point was -- sorry.

1 Q No, take your time.

2 A So the whole point was that we were going
3 to do those changes that we needed to do as far as
4 marketing budgets, PE authorities, guardrails,
5 things like that, and that we were going to move to
6 a P&L model. Period, end of story.

7 So there wasn't any sort of timeline that
8 I remember saying that we're going to only do this
9 for 90 days. It really doesn't even make sense
10 because we knew that we had to go to this new
11 model.

12 Q So you just stated that the marketing
13 budgets were not coming back, correct?

14 A Correct. Not -- they would not revert
15 back to what they were before.

16 Q Understood. Did you tell the SVPs at
17 this meeting that the marketing budgets were not
18 coming back?

19 A No. I think the conversation was that we
20 were moving to a whole new model and what that
21 looked like and what that entailed as far as, you
22 know, expenses and marketing and all of those kind
23 of things. We really didn't know until we had
24 somebody that was under the New American umbrella
25 that could help direct us on that model.

1 Q Were you present at meetings that Gina
2 was in with Ms. Arvielo?

3 A I -- I'm sure I was in meetings over the
4 last -- the years that Gina was here with Patty.

5 Q I'm sorry. I meant at the 2019
6 leadership meeting when you had smaller group
7 meetings, were you present at the meetings with
8 Gina and Ms. Arvielo?

9 A I would assume so. I don't -- I don't
10 recall that Gina had a one-off meeting with Patty.

11 Q What about with Patty, Gina, Jon Reed,
12 Jan Preslo, you and Kelly Allison?

13 A What's the question, I'm sorry?

14 Q You break out into smaller meetings later
15 in the day?

16 A We did have a subsequent meeting the -- I
17 think it was the second day. And it was Kelly,
18 Gina, myself, Jim Muth, Jan and Jon, and I think
19 that was it.

20 Q Patty wasn't present at that meeting?

21 A Not that I recall.

22 Q So did you ever hear Patty Arvielo tell
23 Ms. Spearman that the removal of marketing budget
24 and the change in pricing exceptions was for a
25 period of 90 days?

1 MR. PERLOWSKI: Object to the form,
2 foundation.

3 THE WITNESS: Sorry.

4 MR. PERLOWSKI: That's okay.

5 A I did not hear that she said it was 90
6 days. The whole gist of the meeting was that we
7 were going to move as quickly as we could to this
8 new model.

9 BY MS. GIBSON:

10 Q But you weren't present with Ms. Spearman
11 when -- the entire time when she might have been
12 talking to Ms. Arvielo; is that true?

13 MR. PERLOWSKI: Object to the form,
14 foundation.

15 You can answer.

16 A Yeah, I don't even know how to answer
17 that. I don't follow Patty around. So they could
18 have definitely had a one-off conversation, I...

19 BY MS. GIBSON:

20 Q And did you -- before this February 2019
21 leadership meeting, did -- so they could have had a
22 one-off conversation. Strike that.

23 They could have had a one-off
24 conversation. So you don't know if Patty told Gina
25 it was for a period of 90 days; is that correct?

1 A I don't -- I do not see why Patty would
2 say that because we were all very aligned in the
3 steps that had to take place to get this new
4 compensation model rolled out. And we were all --
5 we all knew it was not going -- it was going to
6 take more than 90 days.

7 Q Was Ms. Spearman aligned with going to
8 the P&L model?

9 A Honestly, I don't think she was.

10 Q Okay. So if she was told it was only
11 going to be for a period of 90 days, would that
12 have placated her?

13 MR. PERLOWSKI: Object to the form,
14 foundation, speculation.

15 A So my theory on this whole thing with
16 Kelly and Gina was that Kelly was very excited to
17 go on to a P&L model.

18 Like I said early on today, Kelly wanted
19 a P&L even coming into NAF, and I think she was
20 even questioning whether to come to NAF because we
21 didn't have a P&L model and we were on a straight
22 BPS model.

23 Kelly felt very confident in managing a
24 P&L. She had done it for years and made very good
25 money. And I think Gina had profited off of that

1 as well and the two of them together made a good
2 working team when it came to running a P&L.

3 They chose to join NAF on a straight BPS
4 model and it worked out very, very well. Because
5 profits in the mortgage industry started to
6 diminish in the years that they were here and
7 margins got very, very tight and because they were
8 on a straight BPS model, their pay didn't really
9 fluctuate a lot.

10 Where if you were on a P&L model in 2018,
11 we had many, many stories of many people in the
12 Kelly and Gina positions that made zero money or
13 actually owed money to companies because P&Ls were
14 let to go negative.

15 So I think that when we presented the P&L
16 models Kelly was all for it. I think she was one
17 of the people that was excited about it because she
18 had done it for years and done it very well.

19 And honestly, I felt like Gina wasn't. I
20 think that she liked the stability of an override
21 BPS model and I -- I could see why she would. And
22 I think that's where, you know, there was some
23 contention between Kelly and Gina.

24 Q So my question was, would telling Gina
25 that it was just for a period of 90 days entice her

1 to stay on with NAF?

2 MR. PERLOWSKI: Object to the form,
3 mischaracterizes testimony, foundation.

4 MS. GIBSON: I'm not mischaracterizing
5 testimony, I'm asking a question.

6 MR. PERLOWSKI: Mischaracterizes the
7 question that you said you asked.

8 BY MS. GIBSON:

9 Q You can answer the question.

10 A Yeah, I can't answer that question
11 because I don't think that was ever said.

12 Q Okay. So you understood that
13 Ms. Spearman wasn't happy with going to the P&L
14 model; is that correct?

15 A Well, that's my perception, I'll say
16 that.

17 Q That's what I'm asking. Okay. And you
18 don't know if Ms. Arvielo told her it was just for
19 90 days to keep her on; is that true?

20 A Yeah, listen, we -- we had -- there would
21 be no false promises to keep Gina on. So Kelly and
22 Gina were a team. Kelly was the one that really
23 directed how everything went.

24 So, you know, Kelly was the one that was
25 the leader, Kelly was the one that we had to talk

1 to about comp changes or anything like that for her
2 region. So --

3 Q Did Ms. Spearman have a separate contract
4 from Kelly?

5 MR. PERLOWSKI: One second. Were you
6 done with your answer, Ms. Bunce?

7 THE WITNESS: Yeah, I'm done.

8 MR. PERLOWSKI: I mean, she was --

9 MS. GIBSON: Okay. I would like
10 Ms. Bunce to answer the question, and she's welcome
11 to explain it, but I'm asking very focused
12 questions.

13 MR. PERLOWSKI: Well --

14 MS. GIBSON: And I don't want to waste
15 the day. We can get out of here a lot sooner is
16 all I'm saying.

17 MR. PERLOWSKI: Well, again, she was in
18 the middle of an answer and you cut her off, so
19 please let her finish.

20 BY MS. GIBSON:

21 Q Do you have anything else on that,
22 Ms. Bunce? I didn't mean to cut you off.

23 A No, I'm done.

24 Q Okay. So did Kelly and Gina have
25 separate contracts?

1 A They did.

2 Q Okay. When Kelly resigned -- I mean, I'm
3 sorry, when Gina resigned, did Kelly resign?

4 A She did not.

5 Q Okay. Is Ms. Allison still employed by
6 NAF?

7 A She is.

8 Q Okay. So they did their own thing? I
9 understand you're testifying their compensation was
10 tied, but you did testify that -- or let me ask you
11 this: Ms. Allison was happy with going to the P&L
12 model; is that correct?

13 A That was my impression, yes.

14 Q And your impression is that Ms. Spearman
15 was not?

16 A Correct.

17 Q And you had -- do you know if Ms. Arvielo
18 ever told her it was just for a period of 90 days?

19 MR. PERLOWSKI: Objection, asked and
20 answered.

21 You can answer again.

22 A Yes, she did not say that as far as I
23 know.

24 BY MS. GIBSON:

25 Q And if Ms. Spearman said she said that,

1 who would be the best person to ask other than
2 Ms. Spearman whether Ms. Arvielo said that at this
3 leadership meeting?

4 A Like I said, I don't think she said that.
5 There would be no reason to say that.

6 Q I understand there would be no reason
7 because you're going to a P&L model, but would
8 there be a reason to tell her that to keep her on?

9 A No.

10 Q Why not?

11 A Because at that point we did not feel at
12 all that we were going to lose Gina or Kelly over
13 this subject. We knew that Kelly was actually very
14 for a P&L model.

15 And Gina is tied to Kelly. So, you know,
16 did we foresee Gina leaving Kelly? No, they're
17 best friends, they've been working partners for
18 years and years and years.

19 I did see a little bit of some cracks in
20 the relationship, but I figured they could get
21 through it.

22 Q Were any slide shows or PowerPoints
23 presented at this meeting?

24 A We did have a handout that we gave to
25 everybody. It wasn't a slide show.

1 Q And what was in the handout?

2 A It showed the corporate expenses. It had
3 a pie chart sort of diagram.

4 Q Do you know if that's been produced in
5 the litigation?

6 MR. PERLOWSKI: It has.

7 MS. GIBSON: Okay, Henry, can you or
8 Chase give us the Bates number at your convenience.

9 BY MS. GIBSON:

10 Q Any other documents handed out other than
11 the one you just discussed?

12 A If I remember correctly, the P&Ls for
13 2018 were also produced.

14 Q Anything else?

15 A Not that I can remember.

16 Q Okay. Did -- were meetings held amongst
17 officers of NAF before the leadership meeting to
18 prepare for it?

19 A Yeah.

20 Q And who attended those meetings?

21 A From what I remember, it was mostly
22 Jason, Jan, Jon and I. Jim Muth was in a lot of
23 those meetings just because he is the person that
24 puts together the P&Ls and does a lot of the
25 finance reporting for us and things like that.

1 Q And what's Jim Muth's title?

2 A VP of finance.

3 Q And is he still with NAF?

4 A He is.

5 Q And so at this meeting -- so the Arvielos
6 didn't attend this pre-leadership meeting with you?

7 A Not that I recall.

8 Q Okay. And what was discussed with
9 respect to compensation at this meeting?

10 A It was really just a precursor to the
11 meeting that we had with the SVPs. So we were
12 talking about 2018 and what had happened and what
13 we thought was going to happen in 2019 with
14 compressing margins and just the -- you know, the
15 purchase and REFI markets and things like that. So
16 we were talking about those things.

17 And then just talking about the steps
18 that we would need to take to be able to present a
19 P&L model to this group.

20 Q Did you say Jon Reed was involved in the
21 pre-leadership meetings?

22 A Yes.

23 Q Was Scott Frommert -- no, he wasn't hired
24 yet. Was Jason Obradovich?

25 A He was involved in those meetings as

1 well.

2 Q So you -- the second day of the
3 leadership meeting, were there smaller group
4 meetings held with various SVPs?

5 A As far as I remember, we met with every
6 SVP. So we did have one-on-ones with the SVP, Jon,
7 Jan. I'm almost sure Jason was in there. I know
8 Jim was in there.

9 Of course, I was in there. Just to
10 discuss, you know, PE authority and things like
11 that per region because those vary per region.

12 Q So you, Jon, Jan, Jim, Jason met with
13 Kelly and Gina?

14 A And like I said, I'm not a hundred
15 percent sure if Jason was in those meetings, but I
16 know Jim was and then Jan, Jon and I were in there.

17 Q Okay. And that was separate from the
18 larger group meeting with the other SVPs?

19 A Yeah. So we did the large group meeting
20 all day the first day, we went to dinner, and then
21 the next day we had the breakouts.

22 Q So what was discussed at this smaller
23 group meeting with just Gina and Kelly?

24 A It was just the specifics to the region.
25 So we were talking about the marketing budgets, how

1 much they had spent in 2018, what they were
2 projecting for 2019, the PE authority, pricing
3 exceptions in general, mix of business, things like
4 that.

5 Q Well, if -- so Jon Reed was present for
6 the leadership meeting the day before and then at
7 the smaller group meeting with the girls; is that
8 correct?

9 A That's correct.

10 Q Were the Arvielos present in this smaller
11 group meeting?

12 A Not that I remember.

13 Q Was Jon present the entire time the
14 Arvielos were present at the larger group meeting?

15 A As far as I remember, yes, we were all in
16 that room together.

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 Q Okay. And so tell me how the leadership
12 meeting ended.

13 A What's the question? What do you mean
14 how it ended? The first day, the big leadership
15 meeting when everybody was together?

16 Q Uh-huh.

17 A Yeah, so --

18 Q You had that, you said you had dinner and
19 then the second day you had individual meetings
20 with the SVPs.

21 And when the meeting was over with Kelly
22 and Gina, how did they depart? Were they unhappy
23 with what you had told them?

24 A I don't --

25 MR. PERLOWSKI: Objection, speculation.

1 You can answer.

2 A Okay. Yeah, I don't -- I don't think
3 they were particularly happy, no.

4 BY MS. GIBSON:

5 Q And what was resolved at the meeting
6 about how things were going to go forward with
7 respect to the compensation?

8 A I mean, it was very up in the air at that
9 point because that's when we presented to them that
10 we need to hire a CFO and then we would have to go
11 down the road of building out a P&L model which is
12 not an easy undertaking.

13 Q Okay. So at some point after the -- were
14 Kelly and Gina the only ones -- the only SVPs that
15 were unhappy with the changes that were being
16 announced at the leadership meeting?

17 MR. PERLOWSKI: Objection, speculation.

18 You can answer.

19 A Yeah, I think it was just -- I don't -- I
20 don't know if everybody was unhappy or happy.

21 I think some people that had been wanting
22 a P&L model were excited at the premise that we
23 were actually going to take on this endeavor.

24 But most mortgage people coming out of
25 2018 were not in a great mood going into 2019.

1 So the year had been tough, companies
2 were posting lots and lots of losses, there were
3 lots of consolidations, companies going out of
4 business, companies merging.

5 So, you know, it wasn't -- it wasn't that
6 uplifting of a meeting and a quarter for 2019.

7 BY MS. GIBSON:

8 Q Did NAF develop a new office in Las
9 Vegas?

10 A When?

11 Q I'm asking you.

12 A A new office, no. We've had Vegas
13 offices for years.

14 Q Dating back to when?

15 A Oh, I wouldn't be able to pick a date. I
16 mean, Chris Garza has run Nevada for us for years.
17 Probably 8, 9 years. So we've had our Vegas
18 offices that long.

19 Q At some point after the February 2019
20 leadership meeting, did SVPs travel back to Tustin
21 to meet with you, Jan, Rick and Patty?

22 A I don't recall having another SVP
23 roundtable that year.

24 Q Was there an informal meeting where they
25 came back to meet with you to try to figure out how

1 to help the company financially?

2 MR. PERLOWSKI: Object to the form.

3 You can answer.

4 A All right. Yeah, I don't -- I don't
5 remember having another meeting around those
6 subjects all together with everybody.

7 MS. GIBSON: Okay. Can you introduce
8 549?

9 MR. HARGROVE: Yes.

10 (Deposition Exhibit 14 marked.)

11 MR. PERLOWSKI: Are you uploading a new
12 document because I just did a reload and there
13 isn't a new one.

14 MR. HARGROVE: It just got loaded. It
15 showed up in the Exhibit Share.

16 MR. PERLOWSKI: Okay. Thanks.

17 THE WITNESS: Is it Exhibit 13?

18 MR. PERLOWSKI: Yeah, 13 is the Response
19 to Request for Admissions.

20 MR. HARGROVE: Exhibit 14.

21 MR. PERLOWSKI: Let me do it again.

22 BY MS. GIBSON:

23 Q Let me know, Ms. Bunce, when you've got
24 it loaded.

25 A I've got it.

1 Q Okay. And this is an email marked
2 Exhibit 14. On the bottom it says NAF Bates
3 No. 549. Do you see that?

4 A I do.

5 Q Okay. And if you go ahead and take a
6 minute to look at it, I'm going to ask you a few
7 short questions.

8 But it's an email exchange between Jason
9 Obradovich to Kelly Allison and Gina Spearman and
10 you're cc'd.

11 And then Rick Arvielo emails Kelly
12 Allison and Gina and you. And then Gina -- the top
13 page is Gina's email to Rick, Patty, you and Jon
14 Reed dated March 29th, 2019. Do you see that?

15 A I do.

16 Q Okay. You can take a minute to look at
17 it.

18 A (Witness reviews document.)

19 Okay.

20 Q Okay. So my question -- my first
21 question is, if you look at the first bullet point
22 under Ms. Spearman's email to you, Rick, Patty and
23 Jon Reed, it says -- she says: Good afternoon
24 Rick, Thank you for reaching out to clarify the
25 overall objective. We would like the opportunity

1 to review the facts in the chronology of our
2 discussions over the last 2 months so we are all
3 synchronized to move forward in the best interest
4 of all parties.

5 And the first bullet point is dated
6 February 12th. And is that the date you said was
7 the date of the leadership meeting?

8 A Well, I might be wrong. It sounds like
9 from Gina's email that was the one-on-one meeting
10 that we had.

11 Q Was that part of the leadership meeting
12 -- the two-day leadership meeting?

13 A I think so. Now I'm questioning my
14 dates.

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 Q Okay. But a new policy on PE thresholds
24 was announced and abolishment of marketing budgets
25 was announced; is that correct?

1 A That's correct.

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 Q Okay. And so was there any explanation
7 given to the SVPs about the new policy on PE
8 thresholds and abolishment of marketing budgets
9 other than you just want to go to a P&L?

10 A Yeah, so that was -- I think we've
11 already talked about it, but in the meeting --

12 Q You have, and I don't want to talk over
13 you, but I don't want you to get back into the
14 explanation of the P&L.

15 I understand you wanted to move to a P&L,
16 but there was no -- at this meeting was there any
17 urgency to announcing or abolishing your marketing
18 budget and changing your PE thresholds?

19 A Yeah, there was absolutely an urgency.
20 So, you know, we presented to them that when you
21 look at CM1, the profitability looked different
22 than when you looked at CM3, which was the fully
23 loaded P&L. And that we had to allocate all
24 expenses out to the sales regions.

25 So in -- because we had to do that, then

1 we had to make some changes on the way these
2 regions were managed. And to make sure that we
3 were all profitable, the marketing expense would be
4 borne on to the sales leaders.

5 Q So there was a difference between CM1 and
6 CM3 in what was reflected as expenses in those two;
7 is that correct?

8 A Yep, and I already explained that if you
9 want me to do it again.

10 Q No, I don't.

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 MR. PERLOWSKI: Object to the form.

18 BY MS. GIBSON:

19 Q What was the difference?

20 A I don't --

21 MR. PERLOWSKI: Object to the form.

22 THE WITNESS: Sorry.

23 A I don't know the exact -- sorry.

24 BY MS. GIBSON:

25 Q Okay. What was the difference between

1 CM1 and CM3?

2 A Yeah, I don't know --

3 MR. PERLOWSKI: Object to the form.

4 THE WITNESS: My god.

5 BY MS. GIBSON:

6 Q Go ahead.

7 A Okay. Can I go?

8 Q Yes, you can.

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 Q And her next bullet point is "March 5th
14 SVP/EVP meeting." And were you present at that
15 meeting?

16 A It sounds like it was a meeting -- well,
17 she's referencing a meeting with Jon individually,
18 so I wasn't in that meeting.

19 Q Okay. Okay. To your knowledge, is that
20 when the SVPs flew out to Tustin to meet with Jon
21 again?

22 A My recollection is, no, I don't -- I
23 think that must have been a phone call. I do not
24 remember having the SVPs here twice in a month. So
25 I -- I don't think that it -- that was an in-person

1 meeting.

2 Q Was it possible that you did not attend
3 that meeting? If Jon Reed says that happened, is
4 it possible it happened and you just weren't there?

5 A I would know about it. So if I wasn't
6 sitting there, I would absolutely know about it.

7 Q Okay. And then in the last paragraph,
8 Ms. Spearman says: In summary, as we stated
9 previously, we're firmly committed to being a part
10 of the solution to ensure NAF is profitable.

11 So this is still part of a back and forth
12 between the SVPs and NAF trying to figure out a
13 solution?

14 A That's correct.

15 Q And did the solution ultimately reveal
16 itself in the March 1, 2020 Amendment to Schedule
17 1?

18 MR. PERLOWSKI: Object to the form.

19 You can answer.

20 A Thank you.

21 No, I mean, this -- this is all back and
22 forth coming off of the meetings that we had with
23 the SVPs about making some changes in the interim
24 until we moved into the P&L. So these changes were
25 to take place right away while we moved to a P&L

1 model.

2 I think this back and forth, if you read
3 the whole trail, it's just kind of figuring out
4 what makes sense for their region. If they're
5 going to lower LO comp, what their tolerances were
6 going to be for PEs.

7 And so they were going back and forth
8 with Jason, and Jason was just saying that the math
9 works if everything kind of stays constant. So I
10 think there was just a back and forth on what would
11 make sense for them for their salespeople.

12 Q So like a back and forth negotiating what
13 was going to work for the P&L model?

14 A No, no, no. This was not for the P&L
15 model. This was for right that day going, you
16 know, into the second quarter of 2019, the changes
17 that we were going to make for PEs.

18 I don't think -- I don't think there was
19 any back and forth about marketing budgets on this
20 email. I think it was specific to LO comp and
21 pricing exceptions.

22 Q Okay. I understand.

23 And after the February 19 leadership
24 meeting, you said NAF hired Mr. Frommert?

25 A That's correct.

1 Q Okay. And was Mr. Frommert responsible
2 for preparing the P&L model?

3 A He was.

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 MS. GIBSON: Okay. Can you introduce
11 SPEARMAN645.

12 (Deposition Exhibit 15 marked.)

13 BY MS. GIBSON:

14 Q I think if you'll refresh your screen,
15 you'll see Exhibit 15. And you can -- it's Bates
16 No. SPEARMAN645.

17 And it -- the first page is an email from
18 Christy Bunce to Kelly Allison, Jan Preslo, Jon
19 Reed, cc-ing the Arvielos and Ms. Spearman.

20 And the next page, Bates 646, is a March
21 19th email from Ms. Allison to you, Jan, Jon, the
22 Arvielos and Gina.

23 Go ahead and take a minute and review
24 that.

25 A (Witness reviews document.)

1 Okay.

2 Q Okay. And if you look at the second page
3 where Ms. Allison emails on March 19th to Christy
4 Bunce and others. She said: Good morning. We
5 joined NAF two years ago. In February, it was

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 Q So, in February, she's talking about the
16 February 2019 leadership meeting we were just
17 discussing?

18 A Correct.

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED] [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 MR. PERLOWSKI: Objection to the form and
9 foundation.

10 You can answer.

11 BY MS. GIBSON:

12 Q And then "On March 5th" -- if you read
13 on, she says: The first option presented to us in
14 February was not conducive to long-term sustainable
15 growth and retention. We formulated a plan that
16 would achieve the corporate mandate and have the
17 least negative impact on production. On March 5th,
18 we presented a business plan we believed to be
19 amicable and sustainable for NAF as a whole.

20 So she's referencing the same March 5th
21 that I just showed you in the email in Exhibit 14
22 that Ms. Spearman wrote, correct?

23 A Yes.

24 Q But are you aware -- does this help you
25 remember a March 5th meeting where they presented a

1 business plan?

2 A Yeah, I think we -- I don't -- I don't
3 think it was an in-person meeting. It might have
4 been, but I do not remember it being in person.

5 But it -- I mean, in reading this email,
6 I remember that they were coming up with a plan as
7 to what they wanted to do around LO comp and PE
8 authority and those kind of things, so they had
9 presented that to us.

10 Q And you respond: As you know, we've
11 discussed on quite a few occasions since the
12 beginning of the year, the mortgage landscape has
13 changed drastically since mid 2018.

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 Q Okay.

19 MS. GIBSON: Can you upload Exhibit 15
20 (sic) which is NAF 350.

21 BY MS. GIBSON:

22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

25 MR. PERLOWSKI: Object to the form and

1 foundation.

2 You can answer.

3 A Yeah, I didn't think it -- I mean, in my
4 response, I didn't think it needed to be addressed.
5 I was addressing what had to be done and what we
6 had done to help the effort of making sure that we
7 were profitable.

8 BY MS. GIBSON:

9 Q Okay. And is it still your testimony
10 that Ms. Allison was happy about going to the P&L
11 model after reading this email?

12 A Yes. I do know that Kelly was always
13 wanting a P&L model.

14 MS. GIBSON: If y'all want to refresh
15 your screen and let me know when you have
16 Exhibit 15 (sic) up.

17 MR. PERLOWSKI: MaryBeth, can we take a
18 very, very short restroom break.

19 MS. GIBSON: Can we go -- sure, that's
20 fine.

21 MR. PERLOWSKI: I mean, short.

22 MS. GIBSON: Sure. Give you five
23 minutes. Go ahead.

24 MR. PERLOWSKI: Thanks.

25 (Recess taken 4:37 - 4:42 p.m. EST)

1 MS. GIBSON: Everybody ready? We can go
2 back on the record.

3 And if you want to refresh your screen,
4 Exhibit 15 (sic) should be loaded which is NAF 350
5 Bates number.

6 MR. PERLOWSKI: Exhibit 16.

7 MS. GIBSON: Exhibit 16.

8 MR. PERLOWSKI: Thank you.

9 MS. GIBSON: Yep.

10 (Deposition Exhibit 16 marked.)

11 BY MS. GIBSON:

12 Q And if you look at the first page, it's
13 Bates No. 350. And it's -- the first email is from
14 -- or the last email in the chain is from Jan
15 Preslo to you, Patty Arvielo, Rick Arvielo and Jon
16 Reed, and it's dated 11/16/2019. Do you see that?

17 A Yes.

18 Q And in the first part of the email, the
19 Bates is 352. And it is Ms. Allison emailing Reed,
20 you, the Arvielos and Jan Preslo.

21 And if you want to take a look at what
22 she, you know, wrote in the email to you and
23 refresh your memory, that's fine.

24 But I want to ask you some questions
25 about your response which is at NAF 351 in the

1 second page of the email.

2 A Yeah.

3 Q Okay. And so the second paragraph of
4 your email says: On the P&L stuff, we are just
5 about there from what I have seen. The goal is to
6 have this buttoned up by year-end, but I think it
7 will be sooner for them. Kristin said the dropdown
8 expense stuff is being developed now.

9 So what do mean by, "on the P&L stuff, we
10 are just about there"?

11 A So that's during the time that we were
12 building out the P&L models.

13 Q So when you say building -- I'm sorry, go
14 ahead.

15 A So that's what that was referencing was
16 the actual P&L model.

17 And then the dropdown on the expense
18 stuff is that the SVPs were asking -- because
19 please know that we were in -- talking to the SVPs
20 the whole time we were building these models out as
21 to what they needed to be able to manage the P&L
22 correctly.

23 So the request was that they wanted to be
24 able to see the expenses, expense by expense of
25 hitting into their P&L. So that took some --

1 definitely took some programming effort which
2 Kristin Ankeny was working on for us.

3 Q And then if you go to the next page,
4 Patty -- at the bottom, Patty Arvielo responds to
5 you: Ugh, I'm going to reply. I understand her
6 being upset about the Tennessee group. That's
7 natural, but let's be real sometimes it just
8 doesn't work out.

9 And -- yeah. So what does she mean, it
10 just doesn't work out?

11 A Well, just the fact that not everybody
12 gets along all the time. So, you know, we've got
13 relationships that happen in business and sometimes
14 things just don't work out. Eric and Michelle were
15 not happy under the leadership of Kelly and Gina
16 and they wanted to break off.

17 Q And she says -- she goes on saying: She
18 needs to realize that (and we all know she doesn't)
19 in parentheses, I'm also going to remind her
20 that her growth is our growth our platform that we
21 all built is the groundwork for success and that I
22 just can't handle the distrust and am just going to
23 try to work together the best I can making everyone
24 in the Southeast know that corporate cares.

25 Whose distrust was she talking about in

1 this email to you?

2 A Kelly and --

3 MR. PERLOWSKI: Object to the form.

4 THE WITNESS: Sorry.

5 A Kelly and Gina's mistrust.

6 BY MS. GIBSON:

7 Q So they distrusted you or NAF?

8 A NAF, yes.

9 Q And then Jan replies in the top: Jon and
10 I have spent hours and hours on the phone with Gina
11 and Kelly...

12 Let me go back to that, why did they
13 distrust you?

14 MR. PERLOWSKI: Object to the form,
15 speculation.

16 You can answer.

17 A I don't really know. I mean, I've got my
18 -- my thoughts on it. But I mean, I don't -- I
19 don't know. I don't have any facts.

20 BY MS. GIBSON:

21 Q What would be the reason they would
22 distrust you? Is there anything you were
23 misrepresenting to them?

24 A No, I don't think --

25 MR. PERLOWSKI: Object to the form,

1 speculation.

2 You can answer.

3 A We were running the outside retail
4 division the best that we could and the best that
5 we knew how.

6 We tried to do everything that we
7 possibly could do to make all of our SVPs happy,
8 including Kelly and Gina.

9 So I think that they didn't love the way
10 we ran it. We were a newer outside retail model.
11 We hadn't been around doing this for 20 some odd
12 years like some of the companies that they had
13 worked for.

14 So I think that they were frustrated that
15 we were a little bit of an immature model when it
16 came to outside retail.

17 BY MS. GIBSON:

18 Q And this is dated November 2019, right?
19 So this is like seven months after the leadership
20 meeting?

21 A Correct.

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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BY MS. GIBSON:

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Q Well, did you and Patty and Jan have any discussions about their distrust and how to assuage them and make them feel better about what NAF was doing?

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A Yeah, it was something that we discussed quite often. Because like you read in that email, when I said we were very, very excited to have the girls as part of the team and felt honored and was very excited that we had two women at the top of the sales division, I meant it. And we all felt the same way.

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So it was disheartening that we felt like we're doing everything that we possibly could to make them happy and to run a good division and they were distrustful of it.

22

23

Q Did Kelly explain her distrust and where it stemmed from?

24

25

A I didn't read that in the email. I could read the email again, though.

1 Q I'm just asking if you recall if she
2 explained her distrust to you? You know, I know
3 you were happy with the girls and you wanted to
4 keep them happy, so I was just wondering if you
5 were curious about where their distrust stemmed
6 from?

7 A Yeah, I think the distrust for them was
8 that they didn't feel like our P&L model was what
9 they had been used to in the past.

10 The profit and the loss and the way we
11 accounted for loan margin and things like that were
12 always up for debate.

13 Q So then Jan emailed -- replies -- well,
14 you reply with a thumbs up emoji. And then Jan
15 Preslo responds: Patty, your message was great.
16 Just so you know, Rick -- just so you and Rick
17 know, Jon and I spent hours and hours on the phone
18 with Kelly and Gina going over and over where we
19 are on the P&L, reviewing and re-reviewing what
20 Scott has put together for them. Making tweaks
21 along the way.

22 Do you see that?

23 A I do.

24 Q Okay. And she says what -- "reviewing
25 what Scott has put together for them." And is that

1 the compensation based on the P&L model that's
2 reflected in the March 1, 2020 Amendment to
3 Schedule 1?

4 A That's correct.

5 Q Okay. And Jan says, "We're making tweaks
6 along the way." What does that mean?

7 A What we were -- what the goal of the
8 model was, was it would not be disruptive to the
9 SVPs. So what we were trying to do was back into
10 the assumptions of the P&L to make sure that
11 nobody, not just Kelly and Gina, were taking a pay
12 cut.

13 So we wanted it to be as benign as
14 possible as we went into this model because we knew
15 it was new for everybody and it was a very new
16 model for us. So we knew that, you know, we would
17 probably have to make adjustments along the way as
18 far as the way we were managing it.

19 So, you know, to our credit, we were
20 trying to make sure that no matter what the market
21 was, everybody would not take any sort of pay cut
22 and that would hopefully only be upside with this
23 new model.

24 Q So this is the P&L comp plan that NAF is
25 negotiating with Gina and Kelly; is that right?

1 A Yes.

2 Q Okay. So why didn't NAF just say we're
3 going to this P&L model, here it is, I'm sending
4 you the contract, done?

5 A It's really just not -- it's not what we
6 do here at New American. So, you know, we do try
7 to be inclusive of the leaders. These leaders,
8 these sales leaders, they're -- like I said,
9 they're like little mini businesses.

10 So, you know, we do try to keep everybody
11 as happy as possible. We try to keep things as
12 smooth as possible because they all have a lot of
13 stress and strain managing the salespeople that
14 they do.

15 Q So from the date of the leadership
16 meeting through at least this email, November 16,
17 2019, NAF is working on a P&L model of
18 compensation; is that correct?

19 A That is correct.

20 Q And NAF never just presented it to them
21 and said take it or leave it?

22 A No, we -- we just don't -- wouldn't do
23 that.

24 Q Even though NAF can make any changes to
25 compensation it wants, right?

1 A That's correct.

2 Q Did the Arvielos fly to Atlanta to meet
3 with the girls --

4 A Yes.

5 Q -- sometime in -- I'm sorry?

6 A They -- they did. I don't know what date
7 it was, but they did fly out there to meet with
8 Kelly and Gina.

9 Q Do you remember roughly when it was?

10 A I want to say it was early fall.

11 Q And what was the point of that, of them
12 going to Atlanta to meet with them?

13 A Well, I think it was to see if they
14 could, you know, solidify the relationship. There
15 was distrust there.

16 They wanted to make sure that, you know,
17 Kelly and Gina were firmly on board with New
18 American and that there was a good, you know,
19 steady -- I'm not going to say friendship -- but
20 good working relationship.

21 And I think that Rick was going to review
22 the financials with Kelly and Gina.

23 Q Did anyone go with the Arvielos or was it
24 just them?

25 A I think it was just them.

1 Q If you can go back to Exhibit 16 and look
2 at Bates 351, the second page of the email.

3 A Yep.

4 Q And you write: I honestly think we
5 should read her the legal statements that Ken have
6 from Eric and Michelle, but I don't think anything
7 we say or explain will do any good. You can't
8 reason or have a meaningful relationship with a
9 pathological liar.

10 Do you see that?

11 A I do.

12 Q Why did Eric and Michelle give a legal
13 statement to Ken?

14 A Because they had been told that Kelly and
15 Gina were planning to leave New American, and Kelly
16 and Gina were going to try to recruit Eric and
17 Michelle to the company that they were leaving,
18 which violates their employment agreement with NAF.

19 Q Did that happen?

20 A Matters who you ask.

21 Q Well, I'm asking you.

22 A Well, I wasn't privy to those meetings,
23 but I was told they did happen from Eric and
24 Michelle, and I was told that they didn't happen
25 from Kelly.

1 Q You were told -- say that again, I'm
2 sorry.

3 A I was told that they did happen by Eric
4 and Michelle, and I was told that they didn't
5 happen -- happen from Kelly.

6 Q Okay. And when you say they did happen,
7 what are you talking about?

8 A A meeting with Eric and Michelle --
9 between Eric and Michelle and Kelly and Gina to
10 recruit them to a different company and a different
11 model.

12 Q Gotcha. Okay. Okay.

13 And so you don't believe her -- you
14 believe Kelly that it didn't happen because you
15 said she's a pathological liar; is that correct?

16 MR. PERLOWSKI: Object to the form.

17 You can answer.

18 THE WITNESS: Thank you.

19 A At that time, yes, that was my
20 impression.

21 BY MR. HARGROVE:

22 Q Do you still have that impression of
23 Kelly?

24 A No, I do not.

25 Q So, what she was lying about then is the

1 fact -- is what you just told me, that they, Eric
2 and Michelle, said Kelly and Gina recruited them to
3 leave; is that correct?

4 A Restate the question. I don't understand
5 the question.

6 Q Well, I want to understand what you say
7 she's lying about in this email.

8 A Yeah. Yeah, so my impression was that
9 she was lying, that she wasn't trying to recruit
10 Eric and Michelle to a different company.

11 Q And have you had any conversations with
12 Kelly since you wrote this email where you changed
13 your mind that she was not recruiting them?

14 A We never really talked about it after
15 that conversation. So, you know, things happen in
16 business and you've got to move on and patch up the
17 relationships, and that's what we did.

18 Q What changed your perception of Kelly
19 from not -- that she's no longer a pathological
20 liar?

21 A I think that this email was, you know,
22 when I was heated and I was getting told a lot of
23 different things that Kelly and Gina were doing
24 behind our back.

25 And at the end of the day, after trying

1 to prove what was right and wrong, I decided that,
2 you know, everybody does things for a reason and
3 people can be unhappy with the company and they can
4 look elsewhere and it doesn't mean that they're
5 trying to stage a coup or trying to take a whole
6 bunch of people with them. It's just people
7 exploring what opportunities are out there.

8 And after talking to Kelly and her
9 telling me that she is dedicated to New American
10 and that she plans to stay and she wants to work
11 through everything, then it was just -- it was just
12 a meeting of the minds. It was just -- we moved
13 on.

14 Q Okay. So you called her a pathological
15 liar which implies more than one lie. Was there
16 other things that you believe she lied about?

17 A Not that I recall. It was all stemming
18 around this -- these rumors that were swirling that
19 they were, you know, going to recruit all of their
20 people and go to a different company.

21 Q And in fact, they did not; is that
22 correct?

23 A Correct, Kelly did not.

24 MR. PERLOWSKI: Object to the form,
25 foundation, speculation.

1 BY MS. GIBSON:

2 Q Can you repeat your answer?

3 A Correct, Kelly did not.

4 Q Well, at this time neither of them were
5 trying to -- neither Kelly nor Gina were trying to
6 leave because weren't they, in fact, trying to
7 negotiate their amendment to their contract with
8 NAF?

9 A Yes, correct, we were working through the
10 P&L model at that time.

11 Q Okay. Are you aware of a meeting in
12 September 2019 with Scott Frommert, Jon Reed, Gina
13 and Kelly, Lex Watson and Kelly's CPA?

14 A Yes. I think we already talked about
15 that meeting.

16 Q We did talk about it.

17 And so, at that meeting they brought a
18 lawyer to that meeting to help them understand the
19 changes to the P&L model and to the contract; is
20 that correct?

21 A As far as I know, yes. I was not part of
22 that meeting, but that was my impression.

23 Q Had NAF consulted a lawyer at that time
24 about the compensation model and Gina and Kelly?

25 A Yes, we -- we consult with our general

1 counsel on pretty much anything that we do that
2 impacts contracts or anything like that.

3 Q Was NAF expecting litigation at that
4 point or were you just consulting with him in the
5 normal course of business?

6 A Yeah, normal course of business.

7 MR. PERLOWSKI: Object to the form.

8 THE WITNESS: Sorry.

9 BY MS. GIBSON:

10 Q You can answer.

11 A Yeah, normal course of business.

12 Q So you didn't have any reason to
13 anticipate that Kelly or Gina were going to sue NAF
14 as of September 2019?

15 A No.

16 Q So -- and did in-house counsel attend
17 this meeting in September 2019?

18 A Are you talking about the meeting that
19 Scott and Jon flew out to Atlanta for?

20 Q Yes, I am.

21 A Yeah. No, Ken Block did not attend that
22 meeting.

23 Q Was NAF aware that Kelly and Gina were
24 bringing a lawyer to the meeting?

25 A I don't recall them discussing it. I

1 think we knew that a CPA was going to be there.

2 And actually, I do think Kelly had told
3 us that she was bringing an attorney, her attorney
4 that she consulted with, and she had used that
5 attorney before even when we were first hiring her.
6 She had him review her contract and things, so.

7 Q And we did talk about this a little bit
8 before, but I just want to confirm that I asked you
9 about the slide show.

10 Did you -- have you or anyone at NAF
11 reached out to Mr. Frommert to ask him if he still
12 has a copy of this slide show?

13 MR. PERLOWSKI: Objection, asked and
14 answered, foundation.

15 MS. GIBSON: I don't think so.

16 BY MS. GIBSON:

17 Q Go ahead. You can answer.

18 A Yeah, like I said, I haven't talked to
19 Scott since we parted ways.

20 Q Okay. And to your knowledge, no one from
21 NAF has contacted him to ask for the slide show?

22 A Correct.

23 MR. PERLOWSKI: Same objection.

24 BY MS. GIBSON:

25 Q Why not call him and ask for it?

1 A Well, no employee that leaves New
2 American is allowed to bring New American
3 documents. So I would sure hope that he doesn't
4 have anything if he had put together some sort of
5 slide show, so.

6 Q But you didn't even call him to ask him
7 about the contents of it? Is there any reason why
8 no one from NAF called to ask him about the
9 contents?

10 MR. PERLOWSKI: Objection, foundation,
11 asked and answered five times.

12 BY MS. GIBSON:

13 Q You can answer.

14 A What was the question? Why I didn't call
15 Scott?

16 Q Why anyone from NAF didn't call Scott and
17 say, hey, what was in this slide show that
18 everyone's talking about?

19 MR. PERLOWSKI: Objection, foundation,
20 mischaracterizes repeated testimony, asked and
21 answered five times.

22 Please answer.

23 MS. GIBSON: I'm not repeating testimony,
24 I'm just proffering a question.

25 MR. PERLOWSKI: No, you're

1 mischaracterizing testimony deliberately.

2 MS. GIBSON: No.

3 BY MS. GIBSON:

4 Q Go ahead. You can answer.

5 A I don't think -- as far as I know, that
6 slide show does not exist.

7 Q Was it destroyed?

8 A No, I don't --

9 MR. PERLOWSKI: Objection, foundation,
10 asked and answered.

11 THE WITNESS: Okay.

12 BY MS. GIBSON:

13 Q How did NAF decide which territories to
14 assign regional managers?

15 A Well, it really was predicated on the
16 business that they were bringing in. So if they --
17 you know, and Kelly and Gina specifically in their
18 point, they were bringing in loan officers that
19 were in states that we directed were their -- what
20 we call their dirt, so.

21 Q So when you hire them for the Southeast
22 region, you just -- they were granted authority to
23 develop all the states they wanted in the
24 Southeast; is that correct?

25 A I don't think it was a free-for-all for

1 all the states in the Southeast. I think that
2 Kelly was specific in the states that she had
3 salespeople already in that she was bringing over
4 to NAF and then opportunity in.

5 Q What factors does NAF consider when
6 removing territories from regional managers'
7 territories?

8 A It really just is kind of a circumstance
9 of if we're hiring somebody else, they can come in
10 and build dirt that the regional manager had under
11 their jurisdiction and hadn't built.

12 Or if we could have people play nice in
13 the sandbox and share a territory.

14 It really isn't -- there isn't like a
15 formula for that.

16 Q Okay. What states were in Kelly and
17 Gina's territory in 2019?

18 A I'd have to look at their agreement to
19 rattle off the states.

20 Q Were Tennessee and Virginia part of their
21 territories?

22 A Yes.

23 Q Are you aware of any investments that
24 they made in developing those territories?

25 MR. PERLOWSKI: Object to the form.

1 A Can you be more specific as far as what
2 you mean by "investments"?

3 BY MS. GIBSON:

4 Q Sure.

5 So by -- I guess it was by February 2019,
6 you took away their marketing budget; is that
7 correct?

8 A I think it was -- I think it took --
9 actually took place in March, but yeah.

10 Q So by March you took away their marketing
11 budget.

12 So after March, anything they had to do
13 to develop the territories, the Tennessee and
14 Virginia territories, was from their own personal
15 investment; is that correct?

16 A It was taken out of their commissions,
17 yes.

18 Q And did NAF keep a record of the
19 marketing costs that were taken out of their
20 commissions?

21 A Yes.

22 Q Are you aware of any personal investments
23 that they made in the Tennessee/Virginia
24 territories?

25 MR. PERLOWSKI: Object to the form.

1 A What do you -- I'm sorry, you'll have to
2 clarify. What do you mean "personal investments"?
3 BY MS. GIBSON:

4 Q Well, any funds they invested personally
5 that was not removed from their commissions but
6 that they couldn't submit to NAF that they just had
7 to eat?

8 A I mean, if you're talking about marketing
9 -- I'm assuming you're talking about marketing
10 costs. Is that what you're talking about?

11 Q Uh-huh.

12 A Yeah, so I don't have an accounting of
13 the marketing costs that were spent for that
14 region, but I can assume, yes, that there was
15 marketing costs that Kelly and Gina absorbed when
16 we took away the marketing budgets.

17 Q Do you know how the relationship with
18 Chattanooga Real Estate Partners came into
19 existence?

20 A Not off the top of my head.

21 Q Did Kelly and Gina develop the
22 relationship with Chattanooga Real Estate Partners?

23 MR. PERLOWSKI: Objection, speculation.

24 A I can answer to the best of my --

25 MS. GIBSON: I'm asking her what she's

1 aware of as --

2 A Yeah, I can answer to the best of my
3 ability. So my impression is Kelly and Gina
4 recruited a branch manager in Chattanooga that had
5 the relationship with that real estate firm.

6 BY MS. GIBSON:

7 Q Okay. And then did they invest more
8 marketing costs in developing that relationship
9 with Chattanooga Real Estate Partners?

10 MR. PERLOWSKI: Object to the form.

11 BY MS. GIBSON:

12 Q You may answer.

13 A So I don't have the -- I don't -- I don't
14 know what the marketing costs were that they did
15 absorb, so I can't answer that question.

16 Q But you're not aware of what their
17 dollars invested into that relationship is?

18 A I do not know.

19 MR. PERLOWSKI: Object to the form.

20 BY MS. GIBSON:

21 Q Why did NAF remove Tennessee and Virginia
22 from Ms. Spearman's territory?

23 A It was on the request of Eric and
24 Michelle who were regional sales managers.

25 Q So they just requested that you remove

1 these two territories from your girls, and you did?

2 A No, it was a lot of long conversations
3 about the fact that they didn't feel like they were
4 getting supported by Kelly and Gina.

5 Kelly was continually complaining that
6 she didn't know if Eric and Michelle were a good
7 fit for New American. But Kelly and Gina weren't
8 making much money on Tennessee and Virginia and
9 they weren't growing as fast as they thought that
10 they should.

11 So it was a lot of just contention
12 between the two groups. And then Eric came to me
13 actually when I was at the MBA. We met and he
14 basically said that, you know, they're going to
15 have to find another place to work because the
16 relationship between that -- Michelle and Eric and
17 Kelly and Gina had just gotten to a point where it
18 was just really causing him a lot of angst, and
19 Michelle.

20 So I went back, I talked to Jan and Jon.
21 I talked to Patty and Rick. And we just decided
22 that at the end of the day it's the best thing for
23 everybody.

24 We didn't want to lose Eric and Michelle.
25 They didn't have the most prolific region, but they

1 were doing a good job. And they were good people
2 and we liked them as people.

3 And we knew that Kelly was not thrilled
4 with them either. So we just felt like it was --
5 it was a good business decision just to break them
6 off.

7 Q So you talked to Jan and Jon and Patty
8 and Rick about taking away the territory.

9 Did you ever talk to Gina about taking
10 this territory away from her before NAF did it?

11 MR. PERLOWSKI: Object to the form.

12 BY MS. GIBSON:

13 Q You can answer.

14 A Sorry. I don't think we specifically
15 talked to Gina about it, no.

16 Q So you didn't give her an opportunity to
17 try and explain to you why she should keep the
18 region after she's invested so much of her
19 marketing dollars in the region?

20 MR. PERLOWSKI: Object to the form.

21 BY MS. GIBSON:

22 Q You can answer.

23 A No, it was a business decision.

24 Q Okay. So even though you were proud of
25 these girls and you wanted to help them, you liked

1 what they were doing, you removed these states from
2 Ms. Spearman's territory without speaking to her
3 about it?

4 A Well, we spoke to them about it. We let
5 them know what we were doing. But, yes, it just
6 was a bad relationship between the four of them.

7 Q So what I was asking was, you just took
8 it away before giving Ms. Spearman an opportunity
9 to address the concerns you had?

10 A No, we hadn't been talking about, you
11 know, their concerns about Tennessee and Virginia
12 in that region. We had had many conversations
13 about just kind of where this region was going,
14 their profitability, their lack of growth, all
15 those types of things.

16 So it was made -- a decision was made at
17 the corporate level that it was just time to break
18 it off.

19 Q And when corporate made that decision,
20 had it talked to Gina before taking those --
21 Tennessee and Virginia away from them?

22 A No.

23 Q Did you talk to Gina about leaving
24 Chattanooga Real Estate Partners with her?

25 A When we talked to both Kelly and Gina

1 together about that, it really was up to -- I think
2 the branch manager is Janet, if I remember
3 correctly. It was really up to her whether she
4 wanted to stay under the Kelly and Gina umbrella or
5 if she wanted to move under the Eric and Michelle
6 umbrella.

7 MS. GIBSON: Can I take a five-minute
8 break?

9 MR. PERLOWSKI: Of course.

10 MS. GIBSON: We'll be back in five
11 minutes.

12 (Recess taken 5:13 - 5:19 p.m. EST)

13 MS. GIBSON: Ms. Bunce, are you ready?

14 THE WITNESS: I'm ready.

15 MS. GIBSON: We can go back on the
16 record.

17 BY MS. GIBSON:

18 Q Ms. Bunce, can you pull up Exhibit 1, the
19 30(b)(6) deposition notice?

20 A Okay, I have it up.

21 Q And we've discussed a lot of these topics
22 without specifically referring to this exhibit, but
23 I just want to go through a few that I want to be
24 sure we've covered. If you can go to Page 4, Topic
25 14.

1 A Okay.

2 Q Are there any oral communications that
3 NAF made to Ms. Spearman that NAF contends changed
4 her compensation?

5 A So like --

6 Q Other than what we've talked about at the
7 February 2019 leadership meeting with respect to
8 marketing costs and PEs?

9 A Yeah, our policy is that we do
10 communicate verbally compensation changes. And
11 then we -- normal course of business is to send an
12 agreement showing those changes.

13 Q So any oral communication regarding a
14 change to compensation would be followed up with a
15 written agreement, is that your testimony?

16 A That is correct.

17 Q Okay. And if an oral communication was
18 made that's not followed up with a written
19 agreement, then would that change not take effect?

20 A That's correct.

21 MR. PERLOWSKI: Object to the form.

22 You can answer.

23 THE WITNESS: Sorry, Henry.

24 A That is correct.

25 BY MS. GIBSON:

1 Q Okay. Can you turn to Page 5 and go to
2 Topic 16.

3 A Yep.

4 Q Were you shown charts that Ms. Spearman
5 prepared that calculates the amount of overrides
6 she believes she is owed?

7 A I did see the letter that she had sent.

8 Q And did you look at the chart that was
9 attached to that letter that showed how she
10 calculated those amounts of overrides?

11 A I did look at the chart. I didn't do any
12 math on the chart or anything to that extent.

13 Q And you understand -- or do you
14 understand that those amounts are for overrides
15 that NAF did not pay her for loans identified in
16 Schedule 1 of the November 2016 agreement?

17 MR. PERLOWSKI: Objection, foundation,
18 mischaracterizes evidence.

19 You can answer.

20 And again, don't reveal any privileged
21 communications regarding this topic which
22 Ms. Gibson said earlier on.

23 MS. GIBSON: I'm just asking a simple
24 question.

25 MR. PERLOWSKI: Go ahead.

1 THE WITNESS: Sorry, you cut out there
2 for a second. Am I to answer that question?

3 MR. PERLOWSKI: Yes.

4 BY MS. GIBSON:

5 Q Yes.

6 MR. PERLOWSKI: Subject to the
7 instruction.

8 A Yeah. So like I said, I didn't go in
9 depth into that part that Gina had sent over, so I
10 don't know if I can answer the question to what you
11 want me to, so.

12 BY MS. GIBSON:

13 Q So NAF has denied that -- or refused to
14 pay her the amounts she's requested in those
15 charts; is that correct?

16 A We feel that Gina was paid according to
17 her contracts.

18 Q Okay. That doesn't really answer my
19 question.

20 My question was, you've looked at that
21 chart and she's identified buckets of loans, and
22 has NAF denied that she's entitled to be paid those
23 amounts?

24 A Yes.

25 Q How would NAF go about calculating the

1 overrides on those buckets of loans? I understand
2 you contend they're not owed, but how would you --
3 what documents would you rely upon to calculate
4 those?

5 MR. PERLOWSKI: Object to the form.

6 BY MS. GIBSON:

7 Q You can answer.

8 A I'm not really understanding your
9 question.

10 Q So if you were to calculate the override
11 bonus on the loans that were identified, for
12 example, in 1.4.B, is there -- would you look at
13 the BM/AM spreadsheet to determine the overrides on
14 those loans?

15 A Yes, we would look at all of the
16 commission spreadsheets.

17 Q Okay. So, NAF could calculate the amount
18 of overrides from spreadsheets maintained in the
19 normal course of business; is that correct?

20 A That is correct.

21 MR. PERLOWSKI: Object to the form.

22 You can answer.

23 BY MS. GIBSON:

24 Q And were the BM/AM spreadsheets produced
25 provided to Gina on a routine basis during her

1 employment at NAF?

2 A As far as I know, yes. I wasn't involved
3 in the actual production in sending out of those
4 commission spreadsheets.

5 Q So if she calculated those amounts of
6 override she believes is owed to her from those
7 spreadsheets, those BM/AM spreadsheets that NAF
8 provided her -- and I understand you're contending
9 she's not owed them -- but if she calculated them
10 from those spreadsheets, those spreadsheets are
11 accurate and the amounts she came up would be
12 accurate as well; is that correct?

13 MR. PERLOWSKI: Object to the form,
14 foundation, speculation.

15 You can answer if you can.

16 BY MS. GIBSON:

17 Q You can answer.

18 A Yeah. So, my understanding is that these
19 managers approve the spreadsheets. So if she was
20 thinking that she wasn't paid correctly on a
21 certain month or a certain override, then she would
22 bring up to the commissions team when that was
23 happening.

24 Q Did she ever -- that wasn't my question
25 but good point. Did she ever bring that up to you

1 when that was happening?

2 A I don't recall getting emails saying that
3 she felt like she was due money on certain loans.

4 Q Did she ever speak to you, pick up the
5 phone and call you and say, hey, I'm not getting
6 paid what my contract says I should be paid?

7 A Not that I recall.

8 Q You don't recall, okay.

9 But those spreadsheets -- from those
10 spreadsheets, you could calculate the amount of
11 overrides on those loans, was my question?

12 A Yes.

13 MR. PERLOWSKI: Object to the form.

14 You can answer.

15 BY MS. GIBSON:

16 Q Can you go back to Page 3 and let's look
17 at Topic 3.

18 And Topic 3 is "The nature and scope of
19 Ms. Spearman's productivity, including her loan
20 productivity, and the productivity of states and
21 branches in her territory."

22 How did NAF determine Ms. Spearman's
23 productivity?

24 A Well, the question really doesn't make
25 sense. So if you're asking us how we looked at

1 Gina and Kelly's region as a whole and their
2 productivity as a whole, we just looked at overall
3 volume and overall profitability and a mix of
4 business and PEs and all of those types of things.
5 So it's a myriad of different things that we were
6 looking at.

7 Q Did NAF ever have any complaints
8 regarding their overall productivity, the volume
9 and the profitability?

10 MR. PERLOWSKI: Object to the form.

11 You can answer.

12 A No, Kelly and Gina's region always had
13 very, very good funding volume. The profitability
14 kind of fluctuated. Their book of business was
15 changing a lot. They used to do a lot of
16 government and they were doing more conventional
17 loans and things like that, so -- but no.

18 BY MS. GIBSON:

19 Q Does high volume correlate to high
20 profitability?

21 A No, not always.

22 Q And can you look at Topic 7.

23 Going back to Topic 3, did NAF maintain
24 -- or in what -- let me ask it this way: Obviously
25 you kept records on their volume profitability,

1 loans made states, correct?

2 A Correct.

3 Q Where were those records stored? And is
4 that the information that is kept in the BM/AM
5 spreadsheets?

6 A Yeah. So it would be on the BM/AM
7 spreadsheets. It would be on our P&Ls that are
8 stored on a share drive.

9 Kevlar, which I know was -- is a system
10 that we talked about. Overall production numbers
11 and profitability and all of that is in that system
12 as well.

13 Q Okay. Who compiled the BM/AM
14 spreadsheets?

15 A Our commissions team.

16 Q Who is on the commissions team?

17 A Well, I don't know all the members of our
18 payroll department, but Jean Chen is the person
19 that heads up our commissions team presently at
20 NAF.

21 Q And who does she report to?

22 A She reports directly to Jason Obradovich.

23 Q Does Jason Obradovich have to approve the
24 BM/AM spreadsheets before they go out?

25 A He does not.

1 Q So does the commissions team just send
2 them directly to Gina and Kelly?

3 A Yes.

4 Q And from those spreadsheets is that how
5 their override compensation is determined?

6 A That is correct.

7 Q We talked about this topic quite a bit,
8 but if you can go to No. 24.

9 A Yep.

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1



2

And then...

3

Q What is a source code?

4

MR. PERLOWSKI: One second. Were you finished with your answer, Ms. Bunce?

5

THE WITNESS: Yeah, I'm done.

6

MR. PERLOWSKI: Okay.

7

BY MS. GIBSON:

8

Q If you weren't finished, I thought you were, you can go ahead if you have more to say.

9

10

A No.

11

Q What is a source code?

12

A Source code is the way that we track what loans are coming in through what lead source.

13

14

Q What loans are coming in from what lead source?

15

16

A Correct.

17

Q Why does that matter?

18

A It matters because we -- we compile reports on it, we pay different compensation.

19

20

Like in Kelly and Gina's region specifically, they have builder comp in their LO agreement. So like the people that are attached to a builder relationship will change that source code so that it reflects what builder it's coming from.

21

22

23

24

25

1 Things to that effect.

2 Q In January or February of 2019, did you
3 announce a new policy giving loan officers
4 discretion to use different source codes?

5 A We did.

6 Q And what was that policy?

7 A That they could choose to go down in
8 compensation if there was an outside market
9 movement of some sort, they needed to take a PE
10 because loan extension or something happened with a
11 loan not closing on time or just to be more
12 competitive with the market because the market was
13 moving pretty quickly.

14 Q So a loan officer would have to take a
15 cut on his comp to lower the interest rate?

16 A If they chose to do that at origination.

17 Q So before January or February of 2019,
18 that was -- the company did not allow that?

19 A No.

20 Q Okay. So does that tie a loan officer's
21 compensation to interest rates?

22 A I don't -- I'm not understanding your
23 question.

24 Q Well, if the loan officer is going to
25 take a lower comp to offer a lower interest rate to

1 win a loan, isn't that tying his compensation to
2 the interest rate?

3 MR. PERLOWSKI: Object to the form.

4 BY MS. GIBSON:

5 Q You may answer.

6 A It gave them the lever to compete with
7 their competition.

8 Q Well, does that incentivize a loan
9 officer to not make concessions on interest rates?

10 MR. PERLOWSKI: Object to the form.

11 THE WITNESS: I'm sorry. Go ahead,
12 Henry.

13 MR. PERLOWSKI: Object to the form.

14 You can answer.

15 A Yeah, so it was -- it was a lever for the
16 loan officers to be able to compete when they were
17 going up against lenders that were being able to
18 offer lower rates because they had lower loan
19 officer comp.

20 BY MS. GIBSON:

21 Q So would a loan officer willingly take a
22 lower comp to offer a lower interest rate?

23 Isn't that incentivizing the officer to
24 charge higher interest rates so he gets higher
25 comp?

1 A No. So our --

2 MR. PERLOWSKI: Object. Object to the
3 form, compound.

4 Go ahead.

5 BY MS. GIBSON:

6 Q You can answer.

7 A So our interest rate is -- our rate
8 sheets in the region are tied to the comp that the
9 loan officer sits at. So this lever was a -- was
10 enabling them to compete when they needed to offer
11 a lower rate to a borrower.

12 So it was their choice to do that or they
13 could decide that they wanted -- that they could
14 let the borrower go to a different competitor. It
15 was really up to them.

16 Q Is that complying with Dodd-Frank?

17 A It is.

18 MR. PERLOWSKI: Object to the form.

19 THE WITNESS: Sorry.

20 A It is.

21 BY MS. GIBSON:

22 Q Did Gina ever raise concerns with you
23 about this being compliant?

24 A We had discussions about it when we
25 changed our policy and it had been reviewed by

1 general counsel and outside counsel and we felt
2 that it was compliant.

3 Q Are loan officers still allowed
4 discretion to use these source codes this way?

5 A They are.

6 Q Has NAF ever been sued for violating
7 Dodd-Frank?

8 A We have not.

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED] [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED] [REDACTED]

6 [REDACTED]

7 [REDACTED] [REDACTED]

8 MS. GIBSON: Okay. We'll take that up.

9 MR. PERLOWSKI: Please do. Please do.

10 MS. GIBSON: Yeah.

11 BY MS. GIBSON:

12 Q Are you -- so you have been working for
13 NAF, I think you told me, since -- was it -- and I
14 may get this wrong. Was it 2009 you decided?

15 A Yes. 13 years.

16 Q Do you socialize with the Arvielos?

17 A What do you mean "socialize"?

18 Q Do you go out with them, have dinner with
19 them, see them outside of work?

20 A Not on a regular basis, no.

21 Q How often do you do that?

22 A I've probably been to dinner with the
23 Arvielos, when it didn't have anything to do with
24 work, maybe three times in the last 13 years.

25 Q Okay. Have you been to visit them at

1 their house in Las Vegas?

2 A Yes, but that was in conjunction with
3 meetings that we were having in Vegas.

4 Q So how often have you been to their house
5 in Vegas in conjunction with meetings?

6 A Twice.

7 Q Okay. How about their house in Montana,
8 have you ever been to their house in Montana in
9 conjunction with meetings?

10 A No.

11 MS. GIBSON: Can you introduce the
12 answer.

13 (Deposition Exhibit 17 marked.)

14 BY MS. GIBSON:

15 Q And we are introducing what's going to be
16 Exhibit 17. And if you refresh your screens, the
17 next exhibit, 17, will appear.

18 A I just refreshed. It's not there. I'll
19 try it again.

20 Q That's okay.

21 A It's still not there.

22 MR. HARGROVE: It should be now. You can
23 hit refresh now.

24 BY MS. GIBSON:

25 Q Has it appeared on your screens?

1 A Nope.

2 Okay. It's up here.

3 Q Okay. And so, Document 17 does not have
4 a Bates number, but it is stamped at the top. And
5 it is Defendant Broker Solutions doing business as
6 New American Funding's Answer and Affirmative
7 Defenses to Plaintiff's First Amended Complaint.

8 Have you seen this before?

9 A I have.

10 Q Okay. Can you go to Page 23, please.

11 A Okay.

12 Q And NAF's Third Defense states:
13 Plaintiff's claims fail, in whole or in part,
14 because Plaintiff was given ample notice, in
15 writing, of any compensation changes made by NAF,
16 including changes permissibly made in NAF's
17 discretion.

18 Do you see that?

19 A I do.

20 Q And my question is, I just want to make
21 sure we've discussed all of these notices that NAF
22 contends is made and that we haven't missed any.
23 There are no others?

24 MR. PERLOWSKI: Object to the form.

25 BY MS. GIBSON:

1 Q You can answer.

2 A I don't even know what you're asking.

3 Q I'm asking -- today we discussed the
4 changes that NAF contends it presented to
5 Ms. Spearman in writing.

6 I want to know if there's any others or I
7 want to be sure that NAF isn't going to allege
8 other changes that have been made in writing.

9 I'm just confirming that we discussed
10 everything today in your 30(b)(6) deposition?

11 MR. PERLOWSKI: Object to the form. That
12 is patently misleading and you know it.

13 MS. GIBSON: No, I don't, Henry. I'm
14 explaining my question.

15 MR. PERLOWSKI: Sure you do. You know
16 all the schedules you have that you haven't shown.
17 Sure you do.

18 MS. GIBSON: Henry, I want her to
19 testify, not you. If she contends there's other
20 things, let the 30(b)(6) witness tell me.

21 MR. PERLOWSKI: Okay, we'll play a memory
22 game.

23 Go ahead.

24 A Yeah, so I have not memorized every
25 schedule that we've ever given to Gina. So we

1 reviewed, I think, three schedules today, but I
2 don't know if there are others. So I cannot --

3 BY MS. GIBSON:

4 Q I'm asking -- oh, I'm sorry, go ahead.

5 A I could go into her HR file and pull them
6 all up. I'm assuming you have them. But I don't
7 know off the top of my head if there's other
8 schedules there or not.

9 Q Okay. And I apologize, my question might
10 not have been quite clear. I understand there are
11 other schedules to the agreement that are not
12 Schedule 1 Regional Manager Compensation.

13 I want to make sure we're discussing
14 Schedule 1 regarding the compensation of the
15 regional manager.

16 A Same answer.

17 Q And we talked about Schedule 1 with the
18 1.4.A, B, C, D, those buckets. And we did talk
19 about several of those versions today.

20 And I apologize if my question was
21 unclear, but I just want to be sure, to your
22 knowledge, those are all I'm aware of, are you
23 aware of any more?

24 A So still the same answer. So I think
25 we've reviewed all of the amendments here today,

1 but I'd have to go into Gina's file to make sure
2 that there weren't any other amendment.

3 Q Okay. Okay. Can you go to Page 24. And
4 the Eighth Defense states: Plaintiff's claims
5 fail, in whole or in part, and any performance of
6 NAF was excused, by virtue of Plaintiff's own
7 failure to perform under her agreement.

8 Can you tell me what facts there are that
9 NAF knows of that she failed to perform under her
10 agreement?

11 A So I think this goes back to what I said
12 before. So if Gina was contesting her compensation
13 override, she had the opportunity to do that every
14 single month with the commissions team.

15 So if she thought that she was missing
16 commissions on certain loans, then she should have
17 brought it up then.

18 Q Okay. And you testified that you don't
19 recall her ever bringing that up to you, but that
20 doesn't mean she never did, correct?

21 A That's correct.

22 Q Okay. And but this -- this really speaks
23 more to her performance under the contract, not her
24 dissatisfaction with how NAF paid.

25 Is there anything that she failed to do

1 with respect to her job duties under her agreement?

2 A No.

3 Q Okay. And then if you can look at the
4 next defense. Plaintiff's claims are barred, in
5 whole or in part, by the doctrine of unclean hands.

6 What do you mean by that? What did she
7 do wrong?

8 MR. PERLOWSKI: Object to the form.

9 You can answer.

10 BY MS. GIBSON:

11 Q You can answer.

12 A It's back to the same -- to the same
13 answer I just gave you. So I -- my -- what I'm
14 trying to say is, if she felt like she wasn't paid
15 correctly, she should have let the commission's
16 team know.

17 Q Okay.

18 A On specific loans that she was given a
19 spreadsheet every single month on.

20 Q Right.

21 And her testimony is she brought that to
22 your attention, but you've testified that you don't
23 recall.

24 So that's -- I'm not -- that's what
25 you're referencing in this defense is her unclean

1 hands? That's what she did wrong?

2 A Yes.

3 Q Okay. If you can go to the next defense,
4 the Tenth Defense. Plaintiff's claims are barred,
5 in whole or in part, by the doctrine of in pari
6 delicto, which I will tell you, and you may know,
7 is Latin for in equal fault.

8 So what did she -- what did Ms. Spearman
9 do, other than what you've already told me, she
10 should have talked to the commissions team,
11 anything else she did that was in pari delicto?

12 A Nothing that I can recall, no.

13 Q Okay. What about the Eleventh Defense,
14 Plaintiff's claims are barred, in whole or in part,
15 by the doctrine of laches?

16 MR. PERLOWSKI: Object to the form.

17 A I'll say this, I mean, Gina wasn't
18 terminated. We wanted her to be part of NAF. So
19 she didn't do anything to cause her to leave New
20 American Funding. She chose to leave.

21 She's suing us because she's saying that
22 we didn't pay her according to her contract. All
23 of this goes back to the fact that we think we did
24 pay her according to her contract.

25 And if she didn't, she was able to raise

1 her hand every single month and highlight the loans
2 that she thought she wasn't getting paid on
3 correctly.

4 BY MS. GIBSON:

5 Q Okay. Thank you for that.

6 So that's the basis of the Eleventh
7 Defense, that she should have raised her hand and
8 said, I'm not getting paid correctly?

9 And you don't recall her ever doing that;
10 is that correct?

11 A Yes.

12 MR. PERLOWSKI: Object to the form.

13 You can answer.

14 A Yes.

15 BY MS. GIBSON:

16 Q Okay. The next one, the Twelfth Defense
17 states: Plaintiff's claims are barred, in whole or
18 in part, by the employment at-will doctrine.

19 So what facts support the employment
20 at-will barring Ms. Spearman's claims to the
21 override compensation?

22 MR. PERLOWSKI: Object to the form.

23 A Yeah, I'm not an attorney, so I don't
24 know how to answer that question.

25 BY MS. GIBSON:

1 Q Yeah, I understand you're not an
2 attorney, but this is a topic in the 30(b)(6)
3 deposition, so Plaintiff is entitled to know the
4 basis of NAF's defense of this.

5 So I'm just trying to get at the facts
6 that support these defenses.

7 A And again, the basis of our defense is
8 that we feel Gina was paid according to her
9 contract.

10 Q Okay. So other than your feeling that
11 you thought she was paid according to her contract,
12 there are no other facts that you have that support
13 the defense of employment at-will barring her
14 claims for overrides?

15 A Well, the fact that she earned those
16 commissions every single month and didn't let the
17 commission's team know that she thought she was due
18 commissions on certain loans that she didn't get
19 paid on.

20 Q Do you know whether she let other
21 officers know she wasn't getting paid on those
22 overrides?

23 A Not that I know of.

24 Q Okay. Do you recall her ever telling you
25 that she wasn't getting paid on those overrides?

1 A No.

2 MR. PERLOWSKI: Object to the form.

3 You can answer.

4 BY MS. GIBSON:

5 Q Can you turn to Page 25, and the
6 Fourteenth Defense states: To the extent Plaintiff
7 has failed to mitigate her alleged damages, her
8 recovery, if any, must be reduced accordingly.

9 What facts -- and if we've already
10 discussed everything, that's fine. But what facts
11 does NAF rely upon that Plaintiff has not -- has
12 failed to mitigate her damages?

13 MR. PERLOWSKI: Object to the form.

14 You can answer.

15 A It's the same answer.

16 BY MS. GIBSON:

17 Q Same answer, that she didn't bring it to
18 the commission's team attention?

19 A Yeah.

20 Q And had she brought -- I'm sorry.

21 A Real quick. I thought this was going to
22 be over at 3 Pacific Time, so if it's not, I've got
23 to be able to send a text to say I'm not going to
24 attend a meeting.

25 Q Well, that's why I asked you if you had

1 any time constraints. I have probably about five
2 more questions, but your attorney may have some
3 questions also. Just five more minutes.

4 A You're going to have to give me a break.

5 Q You're welcome to send a text.

6 A Okay.

7 MS. GIBSON: Do you want to take a minute
8 break and go off the record? We can stay on
9 screen, but we can go off the record for a second.

10 MR. PERLOWSKI: It's entirely up to you.

11 THE WITNESS: Yeah, that's fine. I just
12 have to call the meeting coordinator.

13 (Off the record 5:55 - 5:56 p.m. EST)

14 THE WITNESS: Okay.

15 MS. GIBSON: Can we go back on the
16 record?

17 BY MS. GIBSON:

18 Q And if you look at the Fifteenth Defense,
19 Plaintiff's claims are barred, in whole or in part,
20 or her recovery is reduced, by the doctrine of
21 setoff, including by any overpayments made to
22 Plaintiff.

23 What overpayments were made to Plaintiff?

24 A Oh, I'm not aware of overpayments.

25 Q Okay.

1 MR. PERLOWSKI: I'm sorry, did you ask us
2 to reload?

3 MS. GIBSON: I asked Travis and I'll ask
4 you here in a minute.

5 MR. PERLOWSKI: Okay.

6 (Deposition Exhibit 18 marked.)

7 MS. GIBSON: If you refresh your screen,
8 it should be available.

9 A Okay.

10 BY MS. GIBSON:

11 Q Okay.

12 MR. PERLOWSKI: Not up yet for me. Just
13 give me one second. Seems to be a lag with
14 Ms. Bunce a little bit of the documents coming up.

15 Okay, I'm there, thank you.

16 MS. GIBSON: Yeah, sure.

17 BY MS. GIBSON:

18 Q So this is Exhibit 18 and it does not
19 have a Bates stamp, but it is Defendant Broker
20 Solutions d/b/a New American Funding's Responses
21 and Objections to Plaintiff Gina Spearman's First
22 Interrogatories.

23 Do you see that?

24 A I do.

25 Q And if you go to the last page, do you

1 see a verification that says: I, Christy Bunce,
2 state that I have read Defendant Broker Solutions
3 d/b/a New American Funding's Objections and
4 Responses to Plaintiff's First Set of
5 Interrogatories, and that the facts stated therein
6 are true to the best of my knowledge, information,
7 and belief. I declare under penalty of perjury
8 that the foregoing is true and correct.

9 Do you see that?

10 A I do.

11 Q And is that your signature?

12 A It is.

13 Q And you signed this on August 16th, 2021?

14 A Yes.

15 Q Okay. And did you review these responses
16 before you signed it?

17 A I did.

18 Q Okay. Did you assist in the preparation
19 of this document?

20 A To a certain extent, yes.

21 Q Well, what extent was that?

22 A Our legal team asked me some questions on
23 some of the items and things like that.

24 Q Okay. And you reviewed each of the
25 responses for accuracy?

1 A Yes.

2 Q Okay. And if you look at Interrogatory
3 No. 1, it asks to "Describe with specificity each
4 component of compensation discussed in negotiations
5 between NAF and Ms. Spearman, specifically
6 identifying each individual who participated in
7 said negotiations and the date of said
8 negotiations, leading up to the November 4th Letter
9 Offer made by NAF."

10 If you go to the next page, there's a
11 response. The first paragraph is objections. And
12 then it says in the second paragraph: Subject to
13 the foregoing objections, NAF responds that Jan
14 Preslo engaged in pre-contract discussions
15 predominantly with Kelly Allison over the phone.
16 These discussions largely concerned the employment
17 opportunity, as opposed to negotiating specific
18 forms of comp. The foregoing discussions took
19 place in the period preceding the signing of the
20 Letter Offer, the RMA, the contents of which are
21 the best evidence of the agreements between the
22 parties regarding the compensation offered to
23 Plaintiff.

24 Is there any reason why the two-day
25 meeting that Kelly and Gina flew out to Tustin to

1 meet with you and others is not identified in this
2 discovery response?

3 A No.

4 Q So this is not a complete discovery
5 response?

6 A Well, I think --

7 MR. PERLOWSKI: Object to the form.

8 A -- most of the conversations did happen
9 over the phone, but obviously we had a face-to-face
10 as well.

11 BY MS. GIBSON:

12 Q You had a two-day face-to-face, didn't
13 you?

14 A I don't know if it carried over into the
15 second day. It might have.

16 Q The record will speak for itself.
17 If you can go to Interrogatory No. 4 on
18 Page 3.

19 A I'm there.

20 Q And you can read that to yourself. NAF's
21 response on the next page says: Subject to the
22 foregoing objections, NAF will produce business
23 records identifying the loans originating from
24 Plaintiff's territories from November 2016 through
25 March 2020 that NAF contends were excluded under

1 Paragraph 1.4.B.

2 And I just want to confirm that NAF has
3 produced all of these business records?

4 A To the best of my knowledge, yes.

5 Q Okay. And from these records you contend
6 show the amounts excluded, correct?

7 A That is correct.

8 Q So those are the overrides on loans that
9 NAF contends were excluded under the contract?

10 MR. PERLOWSKI: Object to the form.

11 A To the best of my knowledge, yes.

12 BY MS. GIBSON:

13 Q And so, those are also the loans that
14 Ms. Spearman contends were included under the
15 contract. So could we use those same documents to
16 calculate her damages?

17 MR. PERLOWSKI: Object to the form.

18 BY MS. GIBSON:

19 Q You can answer.

20 A Yes, I -- as far as I know, those
21 commission sheets show all of that information.

22 Q Okay. And if you go to Page 5, we'll
23 read Interrogatory No. 6. And then the response
24 says: Subject to -- and take your time -- without
25 waiving the foregoing, NAF will produce business

1 records that identify the changes to Ms. Spearman's
2 compensation from November 2016 to November '20.

3 And I just want to confirm that NAF has
4 produced all of these documents that it contends
5 change Ms. Spearman's compensation?

6 A To the best of my knowledge, yes.

7 Q Okay. And then if you go to
8 Interrogatory No. 7: Describe with specificity why
9 NAF amended Schedule 1 to the Regional Manager
10 Agreement effective March 1, 2020 and who
11 participated in the decision.

12 Can you tell me why NAF amended Schedule
13 1 with the March 2020 amendment?

14 A Are we going to go over the whole P&L
15 move again?

16 Q I'm just asking a really short, quick
17 question. Why did they amend the March 2020
18 amendment? Was it for the purpose of eliminating
19 override bonuses?

20 A Yes, it was for the purpose of going to
21 the P&L model.

22 Q Did the Arvielos participate in that
23 decision?

24 A Well, it goes back to the meeting that we
25 had with all of the SVPs and all of management for

1 outside retail. So we had all decided together
2 that we were moving to a P&L model.

3 Q So it's your testimony that it was a
4 group effort, everyone, SVPs, officers, everyone
5 said we're going to move to a P&L model. Is that
6 my understanding of your testimony?

7 MR. PERLOWSKI: Object to the form,
8 speculation, mischaracterizes testimony.

9 You can answer.

10 MS. GIBSON: I'm trying to understand her
11 answer.

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 We knew that the SVPs, most of them, were
17 in favor of a P&L model. That's why we brought
18 them in in February to discuss going to a P&L
19 model. Most were all for it.

20 So then we discussed the plan of moving
21 to the P&L model. And then that agreement for
22 March 2020 was to move to the P&L model.

23 BY MS. GIBSON:

24 Q And so, no one person came up with this
25 idea, this was just a great big group decision?

1 MR. PERLOWSKI: Object to the form.

2 You can answer.

3 A That's correct.

4 BY MS. GIBSON:

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 I'll restate my statement again. 2018
13 was a bad year for all mortgage. We realized that
14 a pure override model was not going to work. So we
15 pulled everybody in in 2019 and said that we were
16 going to move to a P&L model which most SVPs wanted
17 to go to from a -- for quite some time.

18 BY MS. GIBSON:

19 Q And I'm going to represent to you that in
20 these interrogatory responses, 11, 14 and 15 --
21 I'll take that back.

22 11 -- Interrogatory 11, if you read the
23 request and the response, I just want to know if
24 NAF has produced all the business records it
25 contends are notifications to Plaintiff of her comp

1 changes?

2 A To the best of my knowledge, yes.

3 Q Okay. And Interrogatory 14 states that
4 "NAF will produce business records showing its
5 Pricing Exception compensation as to Plaintiff from
6 2016 to 2020."

7 Have all of those business records been
8 produced?

9 A To the best of my knowledge, yes.

10 Q Okay. And we did discuss this a little
11 bit before, but I have a follow-up question.

12 Interrogatory 15 just asked for the
13 criteria used by NAF to assign territories and to
14 reassign territories.

15 And the response states on Page 12, "NAF
16 has no set policy regarding territory assignments.
17 Rather, such assignments are made at NAF's
18 discretion and based on its business needs from
19 time to time."

20 What are examples of business needs that
21 made NAF reassign the Tennessee and Virginia
22 territories?

23 A Well, I'll restate what happened with the
24 reassigning of the Tennessee and Virginia
25 territories. It was a conflict between the two

1 managers. So Michelle and Eric were --

2 Q I'm sorry, I didn't hear that. A
3 conflict between what?

4 A The two managers. So it was a conflict
5 between Eric and Michelle versus Gina and Kelly.

6 BY MS. GIBSON:

7 Q And what was the criteria as described in
8 Paragraph 15?

9 MR. PERLOWSKI: Object to the form.

10 A O speak further, to talk about the
11 business needs, it's the same exact reason why we
12 put Florida region underneath Kelly and Gina,
13 because they had good builder experience and that
14 region wanted to build out their builder business,
15 so they also inherited a region as well.

16 BY MS. GIBSON:

17 Q Did you ever amend Kelly's agreement with
18 NAF to remove the 7.5 BPS marketing budget that was
19 in her 2016 agreement?

20 MR. PERLOWSKI: Object to the form,
21 mischaracterizes documentation.

22 Please answer.

23 A Yes. So it was removed when we changed
24 the compensation agreements having the SVPs take on
25 their marketing expenses.

1 BY MS. GIBSON:

2 Q So when you changed the compensation
3 agreements, is that the March 1, 2020 agreement?

4 A I'd have to go through Kelly's file. I
5 haven't reviewed Kelly's agreements to see when
6 that was removed.

7 Q Okay. So NAF removed the 7.5 BPS
8 marketing budget from her 2016 agreement. You just
9 don't know when?

10 MR. PERLOWSKI: Object to the form.

11 Again, mischaracterizes testimony and
12 documentation.

13 Please answer.

14 A Yeah, I don't know what --

15 BY MS. GIBSON:

16 Q You can answer.

17 A I don't know what agreement it was. I'd
18 have to go back and look at the date.

19 Q Okay. I'm just asking that -- if there
20 was an agreement that removed the 7.5 BPS?

21 A Yes. To the best of my knowledge, there
22 was.

23 Q Okay.

24 MS. GIBSON: Okay. If we can take a
25 five-minute break, I might be done with questions

1 for today.

2 MR. PERLOWSKI: Okay. Come back in five?

3 MS. GIBSON: Yep.

4 (Recess taken 6:12 - 6:19 p.m. EST)

5 MS. GIBSON: All right. We can go back
6 on the record.

7 All right, Ms. Bunce, I don't have any
8 more questions today from you.

9 Henry, I do want to suspend the
10 deposition pending any follow-up questions we may
11 have regarding the document production as a result
12 of the motion to compel and the Court's order, and
13 if Ms. Bunce is designated as the witness to
14 testify about those documents.

15 MR. PERLOWSKI: We can take that up
16 later. She's not the designee for the additional
17 topic that the court ordered testimony on. We've
18 already emailed about that.

19 I understood that you're suspending.

20 MS. GIBSON: Okay. Yeah, I'm suspending
21 any follow-up questions on that.

22 MR. PERLOWSKI: And we have 5 hours and
23 37 minutes on the record per the court reporter.

24 MS. GIBSON: Perfect. So if we need to
25 come back, we've got an hour or so.

1 Thank you for your time today,
2 Mrs. Bunce.

3 THE WITNESS: Okay.

4 MS. GIBSON: Thank you, Judi.

5 MR. PERLOWSKI: Thank you, Judi.

6 THE WITNESS: You're welcome.

7 MS. GIBSON: Thanks, Henry.

8 MR. PERLOWSKI: Thank you, MaryBeth.

9 (Deposition concluded at 6:20 P.M. EST)

10 (Signature reserved.)

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1 The following reporter and firm
disclosures were presented by me at this proceeding
2 for review by counsel:

REPORTER DISCLOSURES

3 The following representations and
disclosures are made in compliance with Georgia
4 Law, more specifically:

Article 10 (B) of the Rules and
5 Regulations of the Board of Court Reporting
(disclosure forms).

6 OCGA Sections 9-11-28 (c)
(disqualification of reporter for financial
7 interest).

8 OCGA Sections 15-14-37 (a) and (b)
(prohibitions against contracts except on a
case-by-case basis).

9 - I am a certified court reporter in the state of
Georgia.

10 - I am a subcontractor for Veritext.

11 - I have been assigned to make a complete and
accurate record of these proceedings.

12 - I have no relationship of interest in the matter
on which I am about to report which would
disqualify me from making a verbatim record or
13 maintaining my obligation of impartiality in
compliance with the Code of Professional Ethics.

14 - I have no direct contract with any party in this
action, and my compensation is determined solely by
15 the terms of my subcontractor agreement.

FIRM DISCLOSURES

16 - Veritext was contacted to provide reporting
services by the noticing or taking attorney in this
17 matter.

18 - There is no agreement in place that is prohibited
by OCGA 15-14-37(a) and (b). Any case-specific
discounts are automatically applied to all parties,
19 at such time as any party receives a discount.

20 - Transcripts: The transcript of this proceeding
as produced will be a true, correct, and complete
record of the colloquies, questions, and answers as
21 submitted by the certified court reporter.

22 - Exhibits: No changes will be made to the
exhibits as submitted by the reporter, attorneys,
or witnesses.

23 - Password-Protected Access: Transcripts and
exhibits relating to this proceeding will be
24 uploaded to a password-protected repository, to
which all ordering parties will have access.
25

C E R T I F I C A T E

Deposition of: CHRISTY BUNCE

Date of Deposition: JANUARY 12, 2022

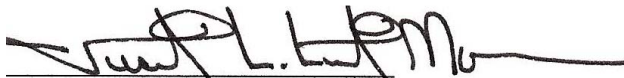
STATE OF GEORGIA:

COUNTY OF DEKALB:

I hereby certify that the foregoing transcript was stenographically recorded by me via Zoom as stated in the caption. The deponent was duly sworn to tell the truth, the whole truth, and nothing but the truth. And the colloquies, statements, questions and answers thereto were reduced to typewriting under my direction and supervision and the deposition is a true and correct record, to the best of my ability, of the testimony/evidence given by the deponent.

I further certify that I am not a relative or employee or attorney or counsel to any of the parties in the case, nor am I a relative or employee of such attorney or counsel, nor am I financially interested in the action.

This, the 29th day of January 2022.



Judith L. Leitz Moran, CCR-B-2312
Registered Professional Reporter

FIRM CERTIFICATE AND DISCLOSURE

Veritext represents that the foregoing transcript as produced by our Production Coordinators, Georgia Certified Notaries, is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the certified court reporter in this case. Veritext further represents that the attached exhibits, if any, are a true, correct and complete copy as submitted by the certified reporter, attorneys or witness in this case; and that the exhibits were handled and produced exclusively through our Production Coordinators, Georgia Certified Notaries. Copies of notarized production certificates related to this proceeding are available upon request to

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Veritext is not taking this deposition under any relationship that is prohibited by OCGA 15-14-37 (a) and (b). Case-specific discounts are automatically applied to all parties, at such time as any party receives a discount. Ancillary services such as calendar and financial reports are available to all parties upon request.

1 TO: Henry Perlowski, Esq., Arnall Golden Gregory
2 Re: Signature of Deponent CHRISTY BUNCE
3 Date Errata due back at our offices: 30 DAYS
4

5 Greetings:

6 The Deponent has reserved the right to read and
7 sign. Please have the deponent review the attached
8 PDF transcript, noting any changes or corrections
9 on the attached PDF Errata. The deponent may fill
10 out the Errata electronically or print and fill out
11 manually.

12 Once the Errata is signed by the Deponent and
13 notarized, please mail it to the offices of
14 Veritext (below).

15 When the signed Errata is returned to us, we will
16 seal and forward to the taking attorney to file
17 with the original transcript. We will also send
18 copies of the Errata to all ordering parties.
19 If the signed Errata is not returned within the
20 time above, the original transcript may be filed
21 with the court without the signature of the
22 Deponent.

23 Please send completed Errata to:
24 Veritext Production Facility
25 20 Mansell Court E, Suite 300
Roswell, Georgia 30076
(770) 343-9696

1 ERRATA FOR ASSIGNMENT NO. 5022785

2 I, the undersigned, do hereby certify that I have
3 read the transcript of my testimony, and that

4
5 _____ There are no changes noted.

6 _____ The following changes are noted:

7
8 Pursuant to Rule 30(7)(e) of the Federal Rules of
9 Civil Procedure and/or OCGA 9-11-30(e), any changes
10 in form or substance which you desire to make to
11 your deposition testimony shall be entered upon the
12 deposition with a statement of the reasons given
13 for making them. To assist you in making any such
14 corrections, please use the form below. If
15 supplemental or additional pages are necessary,
16 please finish same and attach them to this errata
17 sheet.

18
19 Page/Line/ Change / Reason

20 _____/_____/_____/_____

21 _____/_____/_____/_____

22 _____/_____/_____/_____

23 _____/_____/_____/_____

24 _____/_____/_____/_____

25 _____/_____/_____/_____

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CHRISTY BUNCE

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21

Sworn to and subscribed before me
 this ____ day of _____, 20__.

22

23

 Notary Public.

24

My Commission Expires _____.

25

[0000256 - 2016]

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Georgia Code

Title 9, Chapter 11

Article 5, Section 9-11-30

(e) Review by witness; changes; signing.

If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by paragraph (1) of subsection (f) of this Code section whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed. If the deposition is not reviewed and signed by the witness within 30 days of its submission to him or her, the officer shall sign it and state on the record that the deposition was not reviewed and signed by the deponent within 30 days. The deposition may then be used as fully as though signed unless, on a motion to suppress under paragraph (4) of subsection (d) of Code

Section 9-11-32, the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

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Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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